

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF OREGON

3 PORTLAND DIVISION

4 UNITED STATES OF AMERICA,)
5)
6 Plaintiff,) Case No. 3:10-CR-475-KI
7)
8 v.)
9) January 25, 2013
MOHAMED OSMAN MOHAMUD,)
10)
11 Defendant.) Portland, Oregon
12)
13 -----)

14 **TRIAL - DAY 10**

15 **AFTERNOON SESSION**

16 TRANSCRIPT OF PROCEEDINGS

17 BEFORE THE HONORABLE GARR M. KING

18 UNITED STATES DISTRICT COURT JUDGE

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1 P R O C E E D I N G S

2 DEPUTY COURTROOM CLERK: All rise.

3 THE COURT: All right. Good afternoon. Now, as
4 we finished this morning, Mr. Wax raised an issue about 403
5 problems with an exhibit. Have you offered the exhibit at
6 this point?7 MS. HOLSINGER: Yes, Your Honor, we offered 240-1
8 and 240-2, which are two very -- less-than-a-minute videos.
9 The Court I believe admitted those into evidence just prior
10 to the break.11 THE COURT: Right. And those two videos were
12 found within the computer of the defendant in this case; is
13 that correct?14 MS. HOLSINGER: That is correct, and that is what
15 the witness has already testified to.16 THE COURT: All right. Mr. Wax, you are saying
17 that the prejudice of these videos outweighs the probative
18 value? You're making an argument under 403; is that
19 correct?

20 MR. WAX: Yes.

21 THE COURT: All right. Now, I don't know how many
22 of these you have, but if you make a 403 argument, I have to
23 stop and I have to look at these materials, and I have to
24 take a -- or make a decision on it. How many of the 403
25 arguments are you going to make at this point? In other

1 words, do we try going through, or do we just take them one
2 by one?

3 MR. WAX: I don't believe there are any other
4 specific 403 arguments on this particular set of exhibits.

5 THE COURT: All right.

6 MR. WAX: In addition to 403, I mean, we do also
7 argue they're cumulative, but in terms of response to your
8 question, these two are what we are objecting to. There is
9 one other objection to a number of the exhibits that are
10 coming up that is based on a lack of foundation that may
11 make more sense to take up out of the presence of the jury
12 so that the exhibits are not discussed in front of the jury.

13 The issue, Judge, is that there are a number of GIF
14 banners that are coming up in the 262 series. Those are --
15 well, it looks like a banner. It's in Arabic. It has some
16 music and stuff like that.

17 The issue that we have with that is while they're found
18 on the computer, as we understand the way in which computers
19 work, the Government cannot establish anything more than
20 they were found on the computer. And with respect to these
21 particular types of items, our understanding is that if, for
22 example, you do a Google search, every item on the page that
23 comes up on your computer will be downloaded onto the
24 computer whether you are clicking on that item or not, so
25 that if there are -- if you type in, just as an example, the

1 word "wrench," Google could give you wrench, a Home Depot
2 add; Google could give you wrench, an article from
3 *The Oregonian* on a homicide committed with a wrench, et
4 cetera. So I don't think they can establish a sufficient
5 link to the client having acted intentionally or even ever
6 seeing these items.

7 So the mere fact that they're on the computer, we
8 submit, is proof of nothing, and I guess in that sense I am
9 saying 403 -- you know, the prejudice outweighs the
10 probative value, because the probative value is so minimum.

11 THE COURT: Well, is it admissible, though?

12 MR. WAX: Well, if there is no connection to the
13 client, then it seems, to me -- if there's an insufficient
14 connection, then it seems, to me, it's not admissible.

15 THE COURT: We'll take up the admissibility first,
16 and I'll make a decision as to whether it's admissible. And
17 if you're going to argue as part of your argument on -- they
18 haven't laid a foundation, then you can make that argument
19 at that time, the relative probative value of that.

20 But it's a two-stage thing. Admissibility and then a
21 question of prejudice outweighing probative value. You've
22 kind of thrown probative value in there as an element of
23 admissibility, which I'm not sure that that's appropriate.

24 But, in any event, you can make your argument.

25 Now, I have, with 241 and 242, those both have

1 substantial probative value, and I'm going to receive them.

2 So you're ready to proceed with those -- the showing
3 video on that?

4 MS. HOLSINGER: We are, Your Honor. And I don't
5 think taking the time outside the presence of the jury is
6 appropriate with this witness on these 262 exhibits. And if
7 I could explain to the Court what they are, they are GIF
8 images, and the only thing the witness is going to say --
9 they're banners -- that is that they are essentially in the
10 browser cache in the remnants of a site visited. They are
11 on his computer, but they are clearly relevant and probative
12 in that they relate to Al Sahab Media, which is the al-Qaeda
13 media wing, and evidence of videos, including *Rappelling the*
14 *Aggression*, which is in the defendant's computer, and other
15 al-Qaeda videos.

16 There are -- they relate to those items. And all the
17 witness is going to say is these are remnants of a website
18 visited. The defense could argue and certainly ask the
19 witness, "We don't know if he downloaded or clicked on
20 anything," but the fact that they're remnants of a website
21 visited, that's an al-Qaeda media outlet, is probative.

22 THE COURT: Well, you're arguing that now. In my
23 view, we'll take these up one at a time. The problem is
24 with a 403 motion, I've got to stop and look at that
25 material at that point in time and make that decision, and I

1 don't want to do that and have the jury waiting during this
2 time.

3 So let's take it step by step when we get to those
4 exhibits. What you can do is go ahead and identify them and
5 you can offer them.

6 If they object, I'll find out what the basis for the
7 objection is. If 403 is the basis, then I'm going to have
8 to figure out what to do to satisfy my requirements under
9 403.

10 MS. HOLSINGER: Very good. They are the next
11 exhibits after the 240.

12 THE COURT: Let's go ahead with it. I know
13 Mr. Wax would like to do this outside the presence of the
14 jury, and I'll have to decide whether we do. But you'll
15 have to be very specific, Mr. Wax, as to your objection,
16 whether there's any basis for arguing they are not
17 admissible other than 403, because 403, I think, is the
18 second step in making a decision.

19 MR. WAX: I appreciate that, Your Honor. Perhaps
20 if the Court reserves on admitting them until I've had an
21 opportunity to cross on them, it might make the most sense,
22 and at the end of the cross, you rule, and the Government
23 either gets to show them or not.

24 THE COURT: Yeah. You can either cross or ask to
25 inquire in leave of objection if you want.

1 MR. WAX: Thank you.

2 THE COURT: We'll wait until we get to that point.

3 MS. HOLINGER: Just for the Court's assistance,
4 the Government Exhibit -- summary exhibit 243, the exhibits
5 are listed and -- as 262-1 and they go through to 262-9, and
6 the description of each of those files is listed on that
7 exhibit, and that's what the witness will testify to.

8 THE COURT: Let me see if I've got them back here.
9 They're here?

10 THE LAW CLERK: Right here.

11 THE COURT: Good. All right. In the exhibit list
12 I have those materials. It's fortunate. The binders and
13 the materials back there are too big for me to lift, so I'll
14 work with this.

15 All right. Let's bring the jury in.

16 (The jury panel enters the courtroom.)

17 DEPUTY COURTROOM CLERK: I'll remind you you're
18 still under oath.

19 THE COURT: Good afternoon, members of the jury.
20 Sorry to keep you waiting. We did have a couple of legal
21 things to take care of, which we have hopefully done at this
22 point, and so we'll now continue with the testimony.

23 Ms. Holsinger?

24 MS. HOLINGER: Thank you, Your Honor.

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1 DIRECT EXAMINATION

2 BY MS. HOLSINGER:

3 Q. Sir, when we left off, we spoke about 240-1 and 240-2,
4 which you described as videos that were downloaded and
5 located in the computer on the downloads folder there. Do
6 you recall that?

7 A. I do, yes. The downloads directory is a little bit
8 different listing these files here. The path -- reviewing
9 the path on this, if we go through users, Mohamed, video
10 RealPlayer, downloads. This signifies, to me, that the file
11 it was downloaded with is a different application called
12 RealPlayer Media.

13 Q. So they're on the computer?

14 A. They're on the computer, yes.

15 Q. Have you reviewed those videos previously?

16 A. Yes, I have.

17 Q. We'll go ahead and show the jury 240-1. In terms of
18 the length, is it less than a minute long?

19 A. Yes, they are.

20 (Video Exhibit 240-1 played for the jury.)

21 MS. HOLSINGER: And Exhibit 242-2.

22 (Video Exhibit 240-2 played for the jury.)

23 BY MS. HOLSINGER: (Continuing)

24 Q. Mr. Springer, the next exhibits we're going to go to
25 are marked as Government's 262-1 through 262-9. In terms of

1 the exhibits, you can see the chart on the screen there?

2 A. Yes.

3 Q. First of all, tell us what these exhibits are.

4 What -- in terms of a file or what is it?

5 A. Okay. These are -- these are GIF images. And GIF
6 stands for graphic interchange format. It's a compressed
7 image format that's typical of websites. You would see GIF
8 banners. A lot of times you see GIF files in animation form
9 where they morph or change -- they change images, they
10 rotate, they cycle through a certain -- you can take video
11 and turn it into a GIF -- a video clip and turn that clip
12 into a GIF image that's animated, so it loops through
13 itself, displaying whatever it is displaying. And these are
14 files that you would typically find, you know, on a
15 website -- website type.

16 Q. They're -- all those exhibits are GIF images --

17 A. Yes.

18 Q. -- or graphic interchange format?

19 A. That's correct.

20 Q. Which is meant to be some kind of moving thing you
21 would see on a website.

22 A. There are some animated; there are some that are still.
23 But, yeah, it's either/or.

24 Q. And where are these -- where were these exhibits found
25 on this computer?

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1 A. The file path, if you --

2 Q. Before you go to each one of them, I want to talk
3 generally where these are located in the computer.

4 A. Okay. These are located in the -- there's a cache
5 folder underneath the users Mohamed directory. Do you want
6 me to go through the whole path?

7 Q. No.

8 A. No? Oh, sorry.

9 Q. Sorry, I'm not being clear. It's in a cache folder?

10 A. It is, yes.

11 Q. And what does it -- how does a GIF image get onto the
12 cache folder of a computer?

13 A. Okay. On an initial visit to a website, those images
14 are downloaded. We discussed earlier about cache and what
15 browser cache is, is when you visit a website, basically a
16 copy of that website is being downloaded to your local cache
17 folder. So then on any subsequent visits, the machine looks
18 locally and will -- looks locally at a copy of that
19 previously visited site, and the page will load from the
20 local copy. No download was necessary.

21 Q. So what does it forensically tell you about this
22 computer to have the GIF image located -- to find a GIF
23 image?

24 A. That would tell me that that particular website that
25 was posting or viewing -- showing that GIF image was

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1 visited.

2 Q. Going to -- back to 243, the summary chart, which
3 identifies all nine of those GIF images, can you tell us,
4 first, 262-1 -- oh, Mr. Wax is going to object here.

5 MR. WAX: Yes. May I have some questions in aid
6 of objection to determine whether we would be objecting?

7 THE COURT: Yes, you may. Well, excuse me. If
8 she offers it, at that point you can question in aid of
9 objection. I want you to defer your questions until she
10 gets to that point.

11 MR. WAX: Thank you.

12 I assume this is not being shown to the jury then at
13 this point.

14 THE COURT: No, it won't be shown to the jury
15 until it's offered.

16 MS. HOLSINGER: The actual GIF image is not being
17 shown to the jury, Your Honor. This chart and the summary
18 chart, 243, which lists what the GIF image is, the chart is
19 in front of the jury.

20 THE COURT: Okay. Has it been received?

21 MS. HOLSINGER: Yes, it has, Your Honor.

22 THE COURT: Then it's in front of the jury, okay.

23 BY MS. HOLSINGER: (Continuing)

24 Q. So can you tell us the specific description of this GIF
25 image banner identified in 262-1?

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1 A. From the description column there, the -- it says
2 animated GIF banner image, advertisement for As-Sahab Media
3 video titled Nights of Corizan, martyrdom operation of the
4 Marij al base.

5 Q. And you indicated before that was in essentially the
6 Internet cache?

7 A. Internet cache for the Mozilla Firefox browser, yes.

8 Q. Were you able to determine a creation date or the last
9 time that that image hit that computer?

10 A. Yes, it appears that the download -- the date of
11 November 25th of 2010 appears to be the creation date of
12 that.

13 Q. Going to 262-2, that is, again, another GIF banner from
14 a website visited?

15 A. Yes.

16 Q. And what is the description of that particular GIF
17 banner located in the browser cache?

18 A. Description here is animated GIF banner image.
19 Advertisement for an English subtitled version. An As-Sahab
20 Media video titled *Whoever Prepares a Fighter has
21 Participated in the Fight*.

22 Q. And, again, the location is the same in the browser
23 cache of the computer?

24 A. Yes.

25 Q. And the -- or the creation date for that particular GIF

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1 banner was what?

2 A. It appeared, yeah, November 25th, 2010.

3 Q. Moving to 262-3, this particular GIF image banner, what
4 is the description of that item found on the defendant's
5 computer?

6 A. The description is a GIF image. It's -- *Rappelling the*
7 *Aggression* is -- the advertising video *Rappelling the*
8 *Aggression*.

9 Q. And does that indicate the creation date for that GIF
10 image on that computer?

11 A. Yes. November the 25th, 2010, yes.

12 Q. Going to 262-4, can you identify the description of
13 this GIF banner image that was found on the computer?

14 A. The description there states advertising in English
15 translation of an AQAP, title -- statement titled.

16 *Statement Regarding the Lies of the Government on the Recent*
17 *Arrest*.

18 Q. And, again, that was what -- what's the creation date
19 for that particular GIF banner image?

20 A. Creation date is November 25th, 2010, as well.

21 Q. Going to 262-5, can you please identify the description
22 of this GIF banner that was located on the defendant's
23 computer?

24 A. The description listed here is advertising the Al
25 Shabaab video and inspire the believers with the creation

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1 date of 11/25/2010.

2 Q. And also located in the browser cache of the computer?

3 A. Yes. That's correct.

4 Q. Going to 262-6, can you identify the description of
5 this GIF banner image located on the computer?

6 A. This listed here is advertising *Inspire* magazine on
7 Operation Hemorrhage. Same file path as before. The
8 Mozilla Firefox, Mozilla Firefox browser cache, with the
9 creation date of November 25, 2010.

10 Q. Going to 262-7, what is the description of this GIF
11 banner image?

12 A. This GIF is advertising an English translation of the
13 video by the Lord of the Ka'aba. I Have Succeeded. Part 1.

14 Q. And also located in the browser cache in the
15 defendant's computer?

16 A. Yes.

17 Q. Creation date?

18 A. November 25, 2010.

19 Q. Going to 262-8? What is the description of this GIF
20 banner image?

21 A. The description here is advertising in the English
22 translation of the video *Together to Topple the House of*
23 *Saud*, and --

24 Q. This also has the same -- located in the same place in
25 the computer with the same creation date?

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1 A. Yes, that's correct.

2 Q. And 262-9. What is this GIF banner image?

3 A. The -- all that's listed here is the actual
4 title -- the name of the file. It's 1D7E5715D01.

5 Q. And is this located in the same location?

6 A. Yes, it is.

7 Q. And creation date is the same?

8 A. Creation date is the same. November 25th of 2010.

9 Q. And in terms of these GIF banner images, you indicated
10 there what you could tell forensically was that computer
11 visited a site and then it stored that on the computer?

12 A. That's correct, yes.

13 Q. In the Internet cache or the browser cache?

14 Can you tell much more about what the user of the
15 computer did once they got to the site?

16 A. You really -- you really can't. Yeah, there's not much
17 more I can say about that, other than the site was visited
18 and the files were downloaded from that site.

19 MS. HOLSINGER: Your Honor, I would move in 262-1
20 through -9.

21 THE COURT: 262-1 through 262-9 are offered.

22 Now, you've indicated to me that the summary has been
23 received.

24 MS. HOLSINGER: That's correct, Your Honor.

25 THE COURT: All right. What you want to

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1 offer -- are you offering something specific? A banner?

2 MS. HOLINGER: Yes, Your Honor. We have the GIF
3 banner images, but they are -- they're something you have to
4 play on the computer. They're digital, so they fill in like
5 they would if you were on the website.

6 THE COURT: Counsel, they've been offered. What's
7 your position?

8 MR. WAX: Yeah, I object, and I would like to ask
9 some questions in aid of objection.

10 THE COURT: You can question in aid of objection.
11 Go ahead.

12 MR. WAX: Thank you. Mr. Springer?

13 THE WITNESS: Yes.

14 MR. WAX: If I understand correctly, you have
15 identified all but the last one of these items as an
16 advertisement?

17 THE WITNESS: That's correct, yeah.

18 MR. WAX: Now, just so that we can orient
19 ourselves, when one clicks on the website, many websites
20 have advertisements that are running automatically?

21 THE WITNESS: Yes, that's correct.

22 MR. WAX: All right. So if, for example, I were
23 to click on Google and type in a Google search -- I don't
24 know if Google actually has ads in that way -- but a website
25 that has ads, if I clicked on a Home Depot site, they might

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1 have stuff running on a Home Depot site?

2 THE WITNESS: Yes, that's correct.

3 MR. WAX: And when a web page comes up, sometimes
4 there are portions of the page that's coming up that one can
5 see, but there might be other items that one would have to
6 scroll down to, toward the bottom of the page, that wouldn't
7 actually be visible on the screen; correct?

8 THE WITNESS: That's correct, yes.

9 MR. WAX: Okay. And now the way in which these
10 ads work -- let me see if we can understand this -- whether
11 or not a person clicks on the advertisement, the computer
12 will automatically download the item to your computer?

13 THE WITNESS: That's correct. That
14 initial -- that initial page would -- remnants of that page
15 would download locally to the cache. That is correct.

16 MR. WAX: And so an advertisement, a GIF
17 advertisement, will appear on your computer whether you
18 click on the advertisement or not?

19 THE WITNESS: Yes, that's correct.

20 MR. WAX: Okay. In terms of the way in which the
21 computers work, is it the case that when one goes to a
22 website there can, at times, be many items that are listed
23 or embedded -- I don't know the exact words -- on that site
24 that will automatically be downloaded to your computer
25 whether you look at them or not?

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1 THE WITNESS: Yes, that's correct.

2 MR. WAX: Okay. So just with something that many
3 people would be familiar with, for example, if a person
4 types a search into Google, types in the word "wrench," you
5 get a list of responses to your term "wrench." Okay? Are
6 you with me so far?

7 THE WITNESS: Yes.

8 MR. WAX: So one might be, for example, a hardware
9 store advertising wrenches, and there could be an entry for
10 that. Are you with me?

11 THE WITNESS: I'm with you, yes.

12 MR. WAX: Next line could perhaps be an article
13 from a newspaper about a crime that was committed with a
14 wrench; correct?

15 THE WITNESS: Uh-huh.

16 MR. WAX: Another line could be an advertisement
17 or an entry from an auto mechanic with wrenches; correct?

18 THE WITNESS: That's correct.

19 MR. WAX: All right. So regardless of which, if
20 any, of those sites a person actually clicks the mouse on,
21 once that Google page appears on your screen, there will be
22 an image of all of those sites stored in the cache?

23 THE WITNESS: Just -- I want to make sure I'm
24 following you. When you're referring to sites -- so
25 we -- are you -- had we traversed through multiple sites or

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1 are we on one initial page?

2 MR. WAX: I used the wrong phrase. There would be
3 an image of each of those lines, those entries, on the
4 Google page. Those would all be downloaded onto your
5 computer?

6 THE WITNESS: Yes. From the -- if we're talking
7 about one initial page, that's correct. Whatever is on that
8 initial page that was visited will be downloaded into the
9 local cache folder.

10 MR. WAX: Okay. And if a person goes on to a
11 website and is reading an article on the website, as one
12 scrolls through the article, it is often the case that there
13 are multiple images and advertisements on different portions
14 of the article that one is scrolling through on the
15 computer?

16 THE WITNESS: Yes, that's --

17 MR. WAX: Correct?

18 THE WITNESS: -- that's correct, yes.

19 MR. WAX: So that as a person scrolls through one
20 article, there could be five, ten, 50, or more, different
21 images that are being automatically downloaded onto the
22 computer?

23 THE WITNESS: That's correct, yeah. It's very
24 possible, yeah.

25 MR. WAX: In terms of these exhibits, there is no

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1 way for you to determine whether their presence on the
2 computer was the result of an intentional click by Mohamed
3 on any one of these banners, as opposed to the type of
4 automatic downloading that the system does whether or not
5 one clicks?

6 THE WITNESS: That's correct.

7 MR. WAX: Okay. If all that is correct, then is
8 it not also correct that in looking at the total number of
9 images on a computer -- for example, these types of GIFs in
10 Exhibit 262 -- they can give a distorted picture of the
11 actual intentional activity of the computer user?

12 THE WITNESS: Could I -- could I see the list?

13 MR. WAX: Well, it's the exhibit we've been going
14 through. 262.

15 THE COURT: He can see it.

16 MR. WAX: Yeah, I don't have it in front of me.
17 If Ms. Cooke can put it up on the screen --

18 THE WITNESS: Restate your question, if you would,
19 please.

20 MR. WAX: Sure. I think you told us you have no
21 way to know whether these items in 262 were appearing on the
22 computer as a result of any intentional action by Mohamed in
23 clicking on any of these images.

24 THE WITNESS: I think I would have to look
25 at -- what it appears, to me, if I were to -- if I were to

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1 focus in on the creation date of these files, what it
2 appears to me -- if you could -- could you scroll up,
3 please, on the spreadsheet? I want to get a better --

4 MR. WAX: Let me direct your attention to one
5 piece that has not yet been mentioned. Look at the creation
6 times and modified and last accessed. For each of these,
7 it's either 12 -- 11/25, November 25, at either 12:16 or
8 12:17 p.m.?

9 THE WITNESS: That's correct.

10 MR. WAX: So we're not seeing here any gaps of
11 time between the creation, the modification, and the last
12 access, among these images, except for one minute; correct?

13 THE WITNESS: That's correct.

14 MR. WAX: Now, is that also relevant in attempting
15 to assess whether or not a person has intentionally clicked
16 on and downloaded nine separate items?

17 THE WITNESS: Right. There would be no way to
18 tell if -- if it was an intentional click or if one site was
19 visited and all these -- all these banners were on the site,
20 you know, so, yeah, it's difficult to tell, yes.

21 MR. WAX: Your Honor, then I would object to their
22 admission as to having no foundation.

23 THE COURT: I'm going to let Counsel examine
24 further on this question, and then we'll decide it.

25 Go ahead.

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1 BY MS. HOLSINGER: (Continuing)

2 Q. Sir, is what you can tell from these GIF images is that
3 a website was visited that had these advertisements for
4 al-Qaeda videos?

5 A. That's correct, yes.

6 Q. And one of the advertisements of the website visited
7 was *Rappelling the Aggression*?

8 A. Yes. Yes, that's correct.

9 Q. And the video *Rappelling the Aggression* was in his
10 computer that you found; correct?

11 A. Uhm --

12 Q. The zip file?

13 A. The compressed RAR files, yes.

14 Q. So he went to a website where they advertised al-Qaeda
15 videos, and they're listed as a GIF, and he actually
16 downloaded at least one?

17 A. Yes, that's what it appears, yes.

18 MS. HOLSINGER: That's all the questions I have on
19 that particular exhibit, Your Honor.

20 THE COURT: All right.

21 MR. WAX: Your Honor, I do have to follow up from
22 that, please.

23 THE COURT: Go ahead.

24 MR. WAX: The one item that was downloaded, if I
25 am understanding this exhibit correctly, was downloaded on a

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1 different date; correct?

2 THE WITNESS: You -- which item are you referring
3 to?

4 MR. WAX: If we could go to the exhibit on chart
5 number 237, which is the one, I believe, Ms. Holsinger just
6 asked you about, that's the one *Rappelling the Aggression*
7 that is, in fact, found on the computer that we've just
8 heard testimony about? And let's look at the date and times
9 listed there for that exhibit.

10 THE WITNESS: That -- yes, that.

11 MR. WAX: Not November 25?

12 THE WITNESS: That's correct, yes.

13 MR. WAX: Okay. So the appearance of the
14 advertising banner on November 25 would forensically be
15 unrelated to the appearance of the actual video on an
16 earlier date?

17 THE WITNESS: It's possible, based on the date --
18 you know, the differences in the dates and times, it's very
19 possible they are -- they are unrelated.

20 MR. WAX: And with respect to the other eight
21 items that you identified in 262, did I understand correctly
22 that none of those other eight items were found on the
23 computer?

24 THE WITNESS: I'm sorry. Repeat that again.

25 MR. WAX: With respect to the items advertised in

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1 the 262 series of exhibits --

2 THE WITNESS: Okay.

3 MR. WAX: -- none of those items, with this one
4 exception, were found on the computer?

5 THE WITNESS: Yeah, that's correct.

6 MR. WAX: Okay. I renew my objection, Your Honor.

7 THE COURT: Counsel?

8 MS. HOLINGER: Your Honor, if I may, just again,
9 the only thing.

10 BY MS. HOLINGER: (Continuing)

11 Q. You're saying that these GIF banners actually mean is
12 that this computer visited a website where al-Qaeda videos
13 were advertised?

14 A. Yes.

15 Q. And, beyond that, you cannot say much else what's
16 happened?

17 A. That's -- yes. The site was visited, and these items
18 were downloaded as a result of that visit.

19 THE COURT: I'm going to defer ruling on this.

20 The witness will remain, and we'll try and get this taken
21 care of before -- over the lunch hour, at least, so the
22 witness will have to remain.

23 You can proceed with your testimony.

24 MS. HOLINGER: Thank you, Your Honor.

25 THE COURT: And I'm going to defer ruling on the

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1 motion -- on the 403 motion, as well.

2 MS. HOLSINGER: Okay. Thank you.

3 BY MS. HOLSINGER: (Continuing)

4 Q. Sir, we're going to continue on and just identify the
5 remaining items on the summary, and we're going to start
6 with Exhibit -- not an exhibit, but it's the next item on
7 Exhibit 243. If you could just identify this for the jury
8 and where you located this item on the computer.

9 A. This is an audio -- MP3 audio file. And mp is --
10 stands for m.peg. It's short for m.peg. It's a common
11 audio -- audio -- compressed audio type format. And the
12 title of this audio file was nopeacewiththejews_1, and this
13 item was found in the users directory, Mohamed, and the
14 folders -- or the directory downloads.

15 Q. And the next series of items are a number of audio or
16 MP3 audio files; is that correct?

17 A. That's correct.

18 Q. And are they all by the same author, if you will?

19 A. It appears, just based on the title of it, the
20 directory that they were found in.

21 Q. And approximately how many are listed here?

22 A. There were -- if I recall correctly, there were 41
23 audio files listed.

24 Q. And was that just actually two separate series, but
25 they were multiple files?

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1 A. Two series, that's correct.

2 Q. And could you tell the jury where those -- we're not
3 going to go through each one of these individually, but
4 where those audio files were located on the computer?

5 A. One series was located in the file path users, Mohamed,
6 Desktop, lectures, Anwar Al-Awlaki, Madina2 was one path for
7 one series, and the other series was located in the same
8 path leading up to -- to hereafter. So users, Mohamed,
9 Desktop, lectures, Anwar Al-Awlaki, and then the directory
10 hereafter.

11 Q. And do those have all the same creation dates?

12 A. They do. It appears they all were -- the creation date
13 is October the 21st of 2010.

14 Q. And the next item is the last item on that summary
15 exhibit. Can you identify that item and where it was
16 located on the computer?

17 A. This is a PDF file, a -- the title of the file is
18 tawhid_actionPDF. The file path is user, Mohamed, Desktop,
19 books and poetry writings.

20 Q. And what was the creation date on that item?

21 A. That is July the 21st of 2010.

22 Q. Moving to the general browser history of the computer,
23 did you examine the hard drive for information about how
24 often the computer visited certain Internet forums?

25 A. Yes, I did.

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1 Q. And, forensically, can you tell whether a forum or a
2 site has been visited?

3 A. You can, based on the history or the cache file, as
4 well.

5 Q. I'm going to show you Government 242, and that is not
6 in evidence yet, I don't believe.

7 And what is Government Exhibit 242?

8 A. Okay. This is a collection of -- these entries were
9 found in the Firefox cache. We have a tool that can recover
10 cache files, browser cache files, called history extractor,
11 and it allows us to recover, you know, cache files from the
12 browser, and these are -- this is a summary of these
13 particular websites visited and the last visited date there.

14 Q. And those websites are ansar1.net, islamicawakening.com
15 and dawnoftheummah.com?

16 A. That is correct, yes.

17 MS. HOLSINGER: Your Honor, I move into evidence
18 Government Exhibit 242, the summary of the browser cache.

19 THE COURT: Objection to 242?

20 MR. WAX: No, Your Honor. Thank you.

21 THE COURT: It will be received.

22 BY MS. HOLSINGER: (Continuing)

23 Q. Sir, also, on the computer, did you locate computer
24 usernames and passwords for several websites or forums?

25 A. Yes, I did.

1 Q. And did you locate a username or password for the forum
2 dawnoftheummah?

3 A. Yes, I did.

4 Q. In this computer?

5 A. Yes, I did.

6 Q. And did you locate a username and password for a
7 website deenalhaq.info?

8 A. I did, if I remember correctly.

9 Q. Do you want to -- do you -- can I show you something to
10 refresh your recollection?

11 A. Yes, you and --

12 MS. HOLSINGER: May I approach the witness,
13 Your Honor?

14 THE COURT: You may.

15 THE WITNESS: Okay.

16 BY MS. HOLSINGER: (Continuing)

17 Q. Do you recall if you located a username and password
18 for deenalhaq?

19 A. Yes, I did.

20 Q. And did you locate a username and password for
21 jamayahabsaforum.com?

22 A. Yes, I did.

23 Q. Did you also locate a username and password for
24 www.hushmail.com?

25 A. Yes, I did.

1 Q. Did you also located a username and password for
2 islamicawakenings.com?

3 A. Yes, I did.

4 Q. Also, were there other usernames and passwords I'm not
5 asking you about, like for Oregon State and other things?

6 A. Yes, there were.

7 Q. And, in terms of searching this computer, you mentioned
8 previously that there were searches done with search terms?

9 A. Yes. There's a pretty extensive list of search terms
10 out that were submitted to me by the case agent.

11 Q. And was the entire hard drive searched for these terms?

12 A. It is. The index search runs against the entire -- the
13 entire process case.

14 Q. And if a word shows up, if it hits on a word, say the
15 word "Oregon" comes up 5,000 times, where would it get all
16 that from? Would it show up on every single document? Show
17 up --

18 A. It's going to show up anywhere the word is mentioned.
19 Either a news article, online news article, it will show up
20 in a document. A title of a picture, it's going to show up.
21 Any document or any -- any file, even -- even deleted files,
22 fragments of files, that are found in, you know, unallocated
23 space, it's going to show -- it's going to hit on every
24 single instance of that word.

25 Q. And if they went to a website and the computer saved

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1 the visited site information, it could hit on that?

2 A. That's correct, yes.

3 Q. They went to the *New York Times* and did anything on
4 that *New York Times* web page, it could hit on that?

5 A. Yes.

6 Q. If the computer went to the site and then saved that in
7 the cache?

8 A. That's correct.

9 Q. And did you run a search in this instance for the word
10 "jihad"?

11 A. Yes.

12 Q. And how many global overall hits did you get for the
13 word "jihad"?

14 A. You know, I don't recall exactly the number.

15 MS. HOLSINGER: May I approach the witness,
16 Your Honor, to show him something to refresh his
17 recollection?

18 THE COURT: You may.

19 BY MS. HOLSINGER: (Continuing)

20 Q. Does that refresh your recollection?

21 A. It does, yes.

22 Q. So how many overall, in the wide range, did you get for
23 the word "jihad"?

24 A. Based on the search hit results from the query, there
25 were 2,430 hits and 441 files.

1 Q. And what about the word "bomb"? Did you run that word
2 in there?

3 A. Yes, I did. And according to these -- the search query
4 results, there were 8,091 hits and 1,100 files.

5 Q. And that could come from anywhere in that computer or
6 anything that that computer has looked at?

7 A. That's correct, yes.

8 Q. Sir, did you also look at a thumb drive in this
9 particular case?

10 A. I did.

11 Q. And did you do a -- take a forensic -- or take a
12 forensic image of that thumb drive?

13 A. I did, yes.

14 Q. In this case did you find the same items that were on
15 that thumb drive on the computer?

16 A. Yes, I did.

17 Q. Were those identified as Exhibit 239-5 and 239-10
18 through 239-17, the street scenes of Portland and those
19 series?

20 A. Yes. Those were found on there.

21 Q. Okay.

22 MS. HOLINGER: That's all the questions I have on
23 direct.

24 THE COURT: Cross-examination?

25 MR. WAX: Thank you. One moment, please.

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1 || CROSS-EXAMINATION

2 | BY MR. WAX:

3 Q. Sir, I want to start, please, with the subject that the
4 Government just ended on. With respect to the material that
5 was produced in this case, you prepared a report that is in
6 computer form, an FTK report? That report was prepared
7 solely by you or by you in conjunction with other FBI agents
8 or analysts?

9 A. The -- the report was -- once -- once the items -- item
10 was processed, it was placed into what's called the Case
11 Agent Investigating Review Network. And that allows the
12 case agent to begin a review process of the items, and he
13 selects -- since he's the one with case knowledge, he
14 selects the items that are relevant to the case and
15 bookmarks those items.

16 Q. So then in terms of the FTK report that would have been
17 provided by the Government to the defense, that would
18 include the bookmarked items from your search?

19 A. That is -- yes, that's correct.

20 Q. All right. So that if in the FTK report, for example,
21 the word "jihad" appears only 12 times, that is a result of
22 the analysts looking through the array of the information
23 that you had retrieved and selecting the items that appear
24 to be the most relevant or the best in some way?

25 A. Yes.

1 Q. Okay. Now, just so that we all have a very clear
2 understanding of how the word "jihad" might appear a large
3 number of times on a computer, let's take a step back. In
4 analyzing this computer and the Internet history, did you
5 observe what appeared to be an RSS feed to the news station
6 MSNBC?

7 A. I -- you know, I don't recall.

8 Q. All right. We're going to show you a -- perhaps a page
9 from the Internet history material that was provided to us
10 and see whether or not you observe the entry for MSNBC.

11 A. Okay.

12 Q. And perhaps that will jog your recollection about the
13 number of times that that appeared.

14 A. Okay.

15 Q. All right. So just starting with the example you have
16 in front of you, do you recognize what's in front of you as
17 a bookmark from your FTK report?

18 A. Yes.

19 Q. All right. And do you see a line of text that refers
20 to -- well, let's start with the first word pheedo
21 P-H-E-E-D-O, colon. What's pheedo?

22 A. You know, I'm not -- I'm not completely sure on that.

23 Q. Continuing in that line, do you see a web address for
24 MSNBC?

25 A. Yes, I do.

1 Q. Is this, then, indicating to us that the particular
2 item that was bookmarked here came from MSNBC?

3 A. It's -- I mean, if you look at the file path, it
4 appears to -- I can't say for sure that it came from MSNBC.
5 I just know that it came from -- based -- again, this is
6 Internet cache. This is an Internet cache file from a
7 visited site. I don't know if it's a -- if it's a new -- an
8 MSNBC news site. It would appear to -- to show that, but I
9 don't know for sure if that's specifically -- because you're
10 seeing a selected text. It's a selected segment of text
11 that's been selected and bookmarked in this -- in this
12 instance here.

13 Q. Selected and bookmarked by one of the case analysts?

14 A. That's correct, yes.

15 Q. And the top line, again, pheedo, is it not your
16 understanding that there are a number of sort of metadata
17 gathering sites that provide information to other sites
18 about the use of the websites?

19 A. The -- yeah. It's possible, yes.

20 Q. Well, you're familiar with the fact that such things
21 exist?

22 A. Oh, yes.

23 Q. And pheedo, you're not familiar with pheedo as a data
24 gatherer?

25 A. You know, I'm not.

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1 Q. All right. Let's move on, though. After the pheedo
2 colon, orig link. What does "orig link" mean?

3 A. That's original link is what that is. It's short for
4 original link, I think, on that.

5 Q. After original link, you get an a HTTP://www.

6 A. Okay.

7 Q. So is that not telling us that the original link for
8 the information was what follows the www, msnbc.msn.com?

9 A. That would appear so, yes.

10 Q. Now, does this refresh your recollection that among the
11 many, many thousands of lines of text that were on the
12 computer, from which words such as "jihad" might appear,
13 MSNBC would be a frequent source?

14 A. It's possible, yes.

15 Q. Are you familiar with the term -- and I hope I'm
16 getting the right number of Rs and SS -- RSS feed?

17 A. Yes, I am.

18 Q. Let's explain to the jury, please, what that means.

19 A. RSS, it's a random syndication of -- if I remember
20 correctly, I'll try and explain this. RSS feeds allow you
21 to -- if you subscribe to certain feeds, you
22 can -- depending on the topic of the feed, if you subscribe
23 to an RSS feed, it gives you information specific to that
24 feed, to that interest.

25 Q. Okay. All right. So, for example, if I'm interested

1 in learning about the news from England, I could have an RSS
2 feed to the *London Daily Times*?

3 A. That's correct.

4 Q. Okay. If I want to get news about Peoria, I could have
5 a feed to a television station in Peoria?

6 A. That's correct.

7 Q. If I'm interested in the news provided by FOX, I could
8 have a feed to the national FOX news desk?

9 A. That's correct.

10 Q. Okay. And, in your experience with computers in life,
11 you are familiar with the fact that many people have many
12 different news feeds on their computers?

13 A. That's correct.

14 Q. Now, you mentioned bomb 8,000 times overall?

15 A. Overall.

16 Q. In terms of the FTK report, the items selected by the
17 case analysts, as potentially relevant, do you recall that
18 the word "bomb" is entered four times?

19 A. In the -- in my FTK report?

20 Q. Yes.

21 A. You know, I would have to see the report. There
22 were -- there were several items.

23 Q. All right. I think we can show you the page, if that
24 would refresh your recollection.

25 So does this appear to be, again, an image from the FTK

1 report?

2 A. That's correct, yes.

3 Q. And you see -- excuse me, I said four. It
4 appears -- well, there's one, two, four, five. I guess
5 that's four. So either four or five entries for the word
6 "bomb"?

7 A. That's correct.

8 Q. And do you see that the entries that are on this FTK
9 report for the word "bomb" appear to be things that could be
10 or are likely news stories?

11 A. It appears so, yes.

12 Q. All right. So that in terms of what is found on the
13 computer and presented in this FTK report, none of these
14 relate to somebody searching about how to make a bomb?

15 A. These -- these items -- these items were -- again,
16 while this case was out on CAIR and was being reviewed by
17 the analyst, and the analyst and the case agents made the
18 determination what was -- what was relevant and what was
19 not.

20 Q. Right. And in terms of what was chosen to be in this
21 FTK report, we don't see anything, for example, in this area
22 on bombs that relates to going out -- how to make a bomb?

23 A. That's -- it appears that way, yes.

24 Q. Okay. Thank you. So I want to just take a step back,
25 sir, and make sure that we understand the process as it went

1 forward here. And I -- I'm going to start with the question
2 of the date. If I understood you correctly in your direct
3 examination, Ms. Holsinger asked you about the creation of a
4 user account Mohamed, and you indicated that that was
5 created on October 19 of 2009; correct?

6 A. Yes. According -- yes.

7 Q. The computer, however, you observed, was originally set
8 up, perhaps by the manufacturer or the distributor, in mid
9 July of 2009?

10 A. That's correct.

11 Q. The computer was used -- I need to ask another question
12 first.

13 When a purchase -- when a person purchases a computer,
14 it comes with some default settings?

15 A. Yes.

16 Q. So that if I buy a computer and take it home and want
17 to use it, I can use it with whatever the default setting is
18 that the manufacturer or distributor has created. Sometimes
19 it might say "valued customer"?

20 A. That's correct.

21 Q. Okay. So you saw on this computer that the usage of it
22 began on or about September 12th?

23 A. September 12th?

24 Q. Yes. Of 2009.

25 A. No, I don't recall September 12th. I don't recall

1 saying --

2 Q. Do you recall seeing the use of the computer under the
3 default setting valued customer for roughly five weeks
4 before the user Mohamed entry appeared?

5 A. You know, I would have to see that registry -- that
6 registry bookmark listing the previous installation of
7 that -- prior to the upgrade to Windows 7, I would need to
8 see that.

9 Q. I'm not sure, sir, that I have the capability of
10 showing you that from what was provided to us, but I do
11 believe I can show you something else. So we're about to
12 put onto your screen a portion of the page that is from the
13 net analysis report. Does this look familiar to you?

14 A. Yes, it does.

15 Q. Okay. Do you see your name on it?

16 A. Yes.

17 Q. And does that refresh your -- well, let's just start.
18 This is a page from the report that you prepared, from your
19 analysis?

20 A. Yes.

21 Q. And you see the entry September 12th, 2009, valued
22 customer?

23 A. Yes.

24 Q. Top line?

25 And do you see host information on that top line?

1 A. Yes, I do.

2 Q. And the host is?

3 A. The host is -- which -- oh, the very top line?

4 Q. Yeah, top.

5 A. Oregon State -- myoregonstate.edu.

6 Q. You're aware of websites that many universities use the
7 .edu?

8 A. Yes.

9 Q. Now let's go down to what is in yellow. Oh-oh. We'll
10 get it back here, sorry.

11 So let's take a look at -- if we can scroll over, so
12 still on September 12th, 5:30 p.m., and if you scroll over
13 to the right in the yellow line, do you see valued customer,
14 administrative information, Oregon State University,
15 welcome?

16 A. I do, yes.

17 Q. And who's being welcomed?

18 A. Mohamed.

19 Q. Okay. And then if we -- we'll just get the dates back
20 up, please, on the left-hand side.

21 And if we scroll down, do you see any number of entries
22 continuing for valued customer?

23 A. I do, yes.

24 Q. All right. Does that refresh your recollection that
25 the computer, based on this information, was put into

1 service on or about September 12th through the Oregon
2 State -- or at Oregon State University by valued customer
3 Mohamed Mohamud?

4 A. I mean, what you're referring to here is -- see, I
5 guess I'm somewhat confused between what you're trying
6 to -- I -- I guess I don't understand your question exactly.
7 Is it to -- what does valued customer have to do with the
8 registered -- I'm trying to figure out where, you know, your
9 line of questioning -- I'm sorry.

10 Q. Let me try again. I don't have access to the registry,
11 so I'm trying to get at it this way.

12 A. Is --

13 Q. Let me just try to break it down.

14 A. Just a second, sir. This is browser history. This
15 isn't a registry setting.

16 Q. I understand that. Does this tell you -- this browser
17 history came from the computer that you identified as the
18 computer you searched?

19 A. Yes.

20 Q. This information came from the FTK report that you
21 prepared in this case based on your search of Mohamed's
22 computer?

23 A. Yes.

24 Q. This information was on Mohamed's computer?

25 A. Yes, it was.

1 Q. This information shows that a person was using the
2 computer with the username valued customer; correct?

3 A. That's correct. According to this.

4 Q. All right. And that the person using the information
5 valued customer appears to have accessed the Oregon State
6 University website September 12th and had been welcomed;
7 correct?

8 A. Correct.

9 Q. And the person who was being welcomed is
10 Mohamed Mohamud?

11 A. Correct.

12 Q. All right. Now, let me ask you another question.

13 A. Okay.

14 Q. In terms of the search that you performed on the
15 computer, if I understood you correctly, you told us that
16 the search covered every single bit and byte that's on the
17 computer; correct?

18 A. No, it was specific to what was relevant in the search
19 warrant.

20 Q. I understand that. Let me try to rephrase the
21 question.

22 A. You mean the --

23 Q. The search terms that you employ --

24 A. Correct.

25 Q. -- searched through all the bits and bytes on the

1 computer?

2 A. Yes.

3 Q. That would include the bits and bytes that were created
4 by the computer from September 12th -- well, actually, I
5 would imagine from even before September 12th, because
6 wouldn't they pick up things that were loaded at the
7 manufacturer -- at the store -- at the distributor?

8 A. It's quite possible, yes.

9 Q. Okay. So that the temporal scope of the search did not
10 begin on October 19th.

11 A. Uhm --

12 Q. Your search includes information that was put on the
13 computer prior to October 19th; correct?

14 A. Yes, it does.

15 Q. Thank you.

16 Now, in terms of the types of information that you had
17 access to in your search, that would have included all
18 documents produced on the computer in Microsoft Word
19 program?

20 A. Pertaining to the -- are we still talking about search
21 terms or --

22 Q. Yes, sir. The search that you did covered documents
23 that were produced on the computer through Microsoft Word?

24 A. Yes.

25 Q. It included any information that might be on the

1 computer that related to FaceBook activity?

2 A. Yes.

3 Q. Any activity on the computer related to Skyping?

4 A. Yes.

5 Q. Skype is what, sir?

6 A. Skype is an online either chat or -- you can -- you can
7 chat with friends through Skype. You can video conference
8 through Skype.

9 Q. Okay. It would include information that derived from a
10 Yahoo chat that was on the computer?

11 A. Yes.

12 Q. Based on your review of the computer, did it appear as
13 though most of the email activity was conducted through the
14 web browser rather than actually hosted on the computer?

15 A. Yes, it would appear the majority was web-based email.

16 Q. You found some email information, but the bulk of that
17 would be derived from web browsers -- excuse me, from the --
18 I'm losing the term.

19 A. From just web-based email.

20 Q. Thank you. Okay.

21 And you have explained already that the search covers
22 items that I, as an old-fashioned guy that doesn't know that
23 much about computers can see, as well as things that I think
24 I've deleted but remain on the computer in the unallocated
25 space?

1 A. Yes.

2 Q. And it includes the remnants of and results of Internet
3 searching activity?

4 A. Yes.

5 DEPUTY COURTROOM CLERK: Judge, we have a question
6 from a juror.

7 THE COURT: Yes?

8 JUROR: When it's convenient, can we get up and
9 stretch?

10 THE COURT: Let's do that now.

11 Mr. Wax is looking over something. We'll do that now.

12 MR. WAX: I'm turning over pages. I'm moving
13 fast, Judge.

14 (Pause-in-proceedings.)

15 THE COURT: All right, Mr. Wax.

16 MR. WAX: Your Honor, I'm nearly done. Maybe if I
17 could just have one more moment, please.

18 THE COURT: All right.

19 MR. WAX: Your Honor, thank you. I have no
20 further questions.

21 THE COURT: All right. Redirect?

22 MS. HOLINGER: Thank you, Your Honor.

23 ///

24

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1 REDIRECT EXAMINATION

2 BY MS. HOLSINGER:

3 Q. Sir, your search was not able to recover things that
4 were deleted and then written over by something else after
5 they were deleted, would it?

6 A. No.

7 Q. And in terms of the way the search -- the search terms
8 in the FTK report, Mr. Wax showed you an example of jihad 44
9 times. Isn't it -- could that word "jihad" actually appear
10 many more times, but in different parts of your FTK report
11 that related to a different search term? I can refresh your
12 recollection if you want me to show you something from your
13 report.

14 A. Yeah. If you would, please.

15 Q. So an example -- go ahead and take a look at it. Do
16 you recognize this as a page of your FTK report?

17 A. Yes, I do.

18 Q. And do you -- I'm going to ask you the question again.
19 Will the word "jihad" appear in other locations in the FTK
20 report that were located on the computer but weren't in the
21 specific -- under the specific term "jihad"?22 MR. WAX: Your Honor, excuse me. I believe that
23 the reference here is to an agent comment, not an item on
24 the computer.

25 THE COURT: All right.

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1 BY MS. HOLSINGER: (Continuing)

2 Q. I just want to talk to you specifically how these
3 search terms are identified in the FTK report.

4 A. Okay.

5 Q. So -- I want to be clear about, well, the word -- even
6 if the search -- the search term was "jihad," and it lists a
7 number. Will that actually -- is it possible that that word
8 appears in other portions of the FTK, in items that are
9 identified under the word "martyrdom," for example?

10 A. It's possible, yes. I would have to see those
11 bookmarks to --

12 Q. Let me show you the bookmark for the search term, the
13 word "martyrdom." And does the word "bomb" actually appear
14 in this item when the search term is "martyrdom"?

15 A. Uhm --

16 MR. WAX: Your Honor, it's the same objection.
17 Excuse me. I believe what is being looked at is a case
18 agent comment.

19 THE COURT: Okay.

20 MR. WAX: I don't believe there's text there.

21 THE COURT: I don't -- well, I have it over here.
22 You say you believe something is happening. Are you
23 objecting to the form of the question, then?

24 MR. WAX: Yes. Thank you.

25 THE COURT: All right. I will sustain it. Go

1 ahead.

2 MS. HOLZINGER: I have no further questions,
3 Your Honor.

4 THE COURT: All right. You may step down.

5 Thank you. Did you have another question?

6 MR. WAX: Well, in trying to be efficient, I
7 missed -- I have about five minutes that I would appreciate
8 the Court's indulgence that I did not --

9 THE COURT: Okay. Five minutes.

10 MR. WAX: Thank you.

11

12 RECROSS-EXAMINATION

13 BY MR. WAX:

14 Q. Sir, in terms of the searching that you did, do you
15 recall that in addition to the items that appear in -- we
16 have them printed out in some very thick books. In addition
17 to the items that are listed in the FTK report, you found
18 numerous other things, such as reference to watching the
19 Dave Chappelle show, purchases on eBay, advertisements for
20 other movies and things of that nature?

21 A. You know, I would have to specifically see the
22 reference. I don't remember exactly. You know, if those
23 are in there, I would have to see the reference.

24 Q. Do you recall generally -- I'm trying to move this
25 along.

1 A. Okay.

2 Q. Do you recall generally that in terms of the Internet
3 activity that you observed there was a whole vast array of
4 items of -- let me just call it ordinary daily general use,
5 movies -- what adults and kids do on computers; movies, ads,
6 eBay, et cetera, et cetera?

7 A. That are part of this report?

8 Q. Yes. Not the FTK report. The browser history.

9 A. Overall, okay.

10 Q. Yes. Do you recall that?

11 A. I mean, off the top of my head, I can't. I would have
12 to see and look through the browser history to really --

13 Q. We'll show you a couple of examples and see if it
14 refreshes your recollection.

15 A. Okay.

16 Q. We'll start September 14th. I'll pick -- we'll move
17 through this quickly. September 14. I think it's page 1935
18 of the report.

19 Okay. Do you see eBay?

20 A. I do see that.

21 Q. Okay. Let's go to October 9. 1363. Do you see -- did
22 you -- do you see this entry that we've marked?

23 A. Yes, I do.

24 Q. And did you, for example, click on entries of this to
25 see -- this leads you to a Dave Chappelle album?

1 A. No, I did not.

2 Q. All right. Let's go to -- we'll just jump ahead.

3 May 28th. Do you see a -- yeah, do you see a Google
4 search, David Deangelo?

5 A. I do see that.

6 Q. Are you familiar with the Deangelo website, dating
7 advice?

8 A. No, I'm not.

9 Q. You see that's for David Deangelo. David Deangelo,
10 okay.

11 Let's just take August 27. Do you see the entry of
12 Rise of Nations Gold Edition?

13 A. This -- I need to clarify with what we're looking at
14 here. This is not -- this is local browsing history is what
15 we're looking at.

16 Q. Local browsing?

17 A. This is local browsing history. It's referencing a
18 local file path. This is not a web --

19 Q. This particular one is not, but the others were all
20 web-based?

21 A. That's correct.

22 Q. And this one, Rise of Nations, you're familiar with as
23 a video game?

24 A. I believe I've heard of that.

25 Q. Okay. Let's just do one more. Well, let's just go to

1 November 20. And Windows Media, do you see that?

2 A. I do.

3 Q. Did you by any chance click on this to see that it was
4 the movie American Pie?

5 A. I did not, no.

6 Q. Are you familiar with the movie American Pie?

7 A. Yes, I am.

8 Q. Does this refresh your recollection that throughout
9 this vast array of Internet history there were lots of
10 entries of this nature?

11 A. Yeah, it would appear there are entries of that nature
12 in the history, yes.

13 MR. WAX: Thank you. I have nothing further.

14 THE COURT: All right.

15 MS. HOLSINGER: No, Your Honor. Thank you.

16 THE COURT: All right. You may step down.

17 Okay. All right. We have another witness ready?

18 MR. KNIGHT: We do. It's our next expert,
19 Your Honor.

20 THE COURT: Okay. Well, then we'll take a break.
21 Come back at five minutes after 3:00. And let me see the
22 lawyers for a minute.

23 DEPUTY COURTROOM CLERK: Court's in recess.

24 (The jury panel leaves the courtroom.)

25 THE COURT: All right. You may sit down. I'll be

1 looking at the issue of the banners and get back to you on
2 that. Before we go any further, I want to make sure that
3 I'm not missing something. Are there any pending motions or
4 matters other than this issue of the banners, from the
5 Government's standpoint?

6 MS. HOLSINGER: Not that I believe, Your Honor.

7 THE COURT: And Ms. -- yes, Ms. Hay?

8 MS. HAY: Your Honor, you had the two limiting
9 instructions to read to the jury --

10 THE COURT: Right. I have those.

11 MS. HAY: -- before this expert begins.

12 THE COURT: And you want us to give them before
13 the expert starts?

14 MS. HAY: Yep.

15 THE COURT: We will do that.

16 MR. WAX: Your Honor, I believe that in his expert
17 report at least Mr. Kohlmann discusses those GIF banners, we
18 think that a ruling on their admissibility will be.

19 THE COURT: I'll try. And come back in with a
20 ruling in 15 minutes.

21 MR. KNIGHT: And I'll say they're already in the
22 summary chart. The expert testimony, we won't be playing
23 them for the jury, so --

24 THE COURT: Okay. All right. Tell me where you
25 are, then. I'm asking the Government at this point. You're

1 starting your expert as the next witness?

2 MR. KNIGHT: Your Honor, it's our expectation that
3 Mr. Kohlmann will be our last witness in our case-in-chief.

4 THE COURT: Okay. Thank you. We'll be in recess,
5 then.

6 (A recess was taken.)

7 DEPUTY COURTROOM CLERK: All rise.

8 THE COURT: All right. With regard to 262-1 and
9 262-9, after considering the testimony, it seems to me that
10 there are issues of whether or not the possession of this
11 was intentional or if it's unrelated in some fashion. I
12 think the -- Mr. Wax made a number of points about what
13 could have happened and the witness agreed with him. Given
14 the fact that there are 403 issues with regard to them, I
15 will not -- I will accept the argument of Mr. Wax, and I
16 will not receive those documents as exhibits that go to the
17 jury.

18 All right. Will you bring the jury in?

19 (The jury panel enters the courtroom.)

20 THE COURT: All right. You can call your next
21 witness.

22 MR. KNIGHT: Thank you. The Government calls
23 Evan Kohlmann to the stand, Your Honor.

24 THE COURT: Okay.

25

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1 EVAN KOHLMANN,
2 called as a witness in behalf of the Plaintiff, being first
3 duly sworn, is examined and testified as follows:

4

5 DEPUTY COURTROOM CLERK: Please be seated.

6 THE COURT: Before we start, the -- have you sworn
7 the witness? You have, okay.

8 DEPUTY COURTROOM CLERK: Pull your chair all the
9 way forward.

10 THE COURT: Before we start the testimony, I have
11 an instruction for the jury. It's a limiting instruction.
12 I've given you a couple. In fact, this one you've probably
13 heard before.

14 You have heard and seen evidence about Government
15 Exhibit 80, the Interpol notice. I instruct you that this
16 evidence is admitted only for the limited purpose of what
17 affect it had on the mental state of the agents who reviewed
18 it and not for the truth of the matter asserted therein.
19 You must consider it for that purpose and for no other
20 purpose.

21 Now, with regard to hearsay statements generally, as
22 I've mentioned during the course of the trial, you have
23 heard evidence about what the defendant said other people
24 said. I instruct you that this testimony about what other
25 people said is admitted only for the limited purpose of what

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1 affect it had on the mental state of the defendant and not
2 for any other purpose, and you must consider those
3 statements for that purpose and for no other purpose.

4 All right. You may proceed with the testimony of the
5 witness.

6 DEPUTY COURTROOM CLERK: Can you please state your
7 full name and spell your last name?

8 THE WITNESS: Yes. My name is Evan F. Kohlmann.
9 E-V-A-N, F, K-O-H-L-M-A-N-N.

10

11 DIRECT EXAMINATION

12 BY MR. KNIGHT:

13 Q. Good afternoon, Mr. Kohlmann. If you could tell the
14 jury what you do for a living.

15 A. Yes, I work as a international terrorism consultant.

16 Q. And were you hired by the Government in this case to
17 analyze the facts of the defendant's case?

18 A. I was, yes.

19 Q. And before we get into the specifics of your
20 background, can you tell the jury on a day-to-day basis what
21 you do as a terrorism consultant?

22 A. Yes. I work on behalf of private clients, as well as
23 public clients. On a daily basis, I spend about -- usually
24 about 30 percent to 40 percent of my day conducting
25 research. Research would come in the form of, number one,

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1 browsing and viewing forums and websites and other online
2 venues that are run by terrorist organizations, their
3 supporters, their underling, et cetera. It also includes
4 reviewing other materials, secondhand, third-tier materials
5 that are taken from the ground. We have an office in
6 Peshawar, Pakistan. We gather materials from -- we gather
7 materials directly from terrorist organizations.

8 Then about 30 percent of my day is also spent, then, on
9 software, on coding automated software, which can then go
10 through these various websites and venues of information and
11 collect this information automatically, if possible.

12 And about another 30 percent of my day is spent working
13 either with other experts, working with clients, discussing
14 these issues with colleagues, writing up a memorandum about
15 these public subjects. Basically conducting analysis.
16 Taking the original research and distilling it into actual
17 analysis.

18 Q. Thank you. And about how many years have you been
19 doing this work?

20 A. I started working as a terrorism consultant back in
21 1998, approximately. 1998 I was employed at think tank in
22 Washington, D.C. Later, in 2003, I left the think tank and
23 began work on my own.

24 Q. If you could describe for the jury your background,
25 where you went to school and what you studied.

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1 A. Yes. I have a BSFS, which is a bachelor in science of
2 foreign service from the Edmund A. Walsh School of Foreign
3 Service at Georgetown University in Washington, D.C. I also
4 have a certificate in Islam and Muslim-Christian
5 understanding from the Prince Alwaleed Bin-Talal Center for
6 Muslim-Christian Understanding at Georgetown University.
7 And I have a JD, or a Juris Doctorate, a law degree from the
8 University of Pennsylvania Law School in Philadelphia,
9 Pennsylvania.

10 Q. Thank you.

11 And you briefly alluded to the fact that you started
12 this work in 1998. Can you tell the jury, briefly, that
13 think tank work, where it was and what it entailed?

14 A. Yes. Between 1998 and 2003, I was employed as an
15 intern first, and later as an analyst, at a think tank in
16 Washington, D.C., known as the investigative project. The
17 investigative project was started in 1995 by a former CNN
18 journalist which the idea of creating an independent
19 watchdog group that could conduct -- excuse me, that could
20 conduct actual research, open source research, on
21 international terrorist organizations, their supporters,
22 their financiers, their communications, et cetera, and then
23 take this information from out in the open source and then
24 provide it to a variety of different people, everything
25 from --

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1 THE COURT: Mr. Kohlmann, let me interrupt you.
2 You're going awfully fast. I mean, the court reporter is
3 getting it, but slow down a bit.

4 THE WITNESS: No problem, Your Honor. Sorry about
5 that.

6 Again, we're conducting open source research and then
7 providing this to a variety of different clients, including
8 everything from law enforcement agencies, media,
9 congressional committees, independent researchers,
10 academics, basically anyone with a very specific interest in
11 the nitty-gritty of international terrorism, bank account
12 numbers, communications, things that would go beyond kind of
13 the immediate view of these groups.

14 BY MR. KNIGHT: (Continuing)

15 Q. Thank you. And after you left the investigative
16 project, what did you do?

17 A. In 2003, when I left the investigative project, I then
18 founded my own company, a private company, that at first was
19 simply known as globalterroralert.com, the name of my
20 website, and it eventually expanded in 2010 to be known as
21 Flashpoint Global Partners.

22 The reason that we changed the name was because of the
23 fact that it expanded to not only include myself, but a
24 number of other researchers, including individuals who run
25 our office in Peshawar, Pakistan, as well as translators, as

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1 well as other analysts, et cetera, to provide us the
2 greatest breadth possible, in terms of both
3 research -- gathering research, as well as then providing
4 accurate analysis about that research.

5 Q. And you mentioned the office in Pakistan. How many
6 total, full- and part-time employees, work for Flashpoint?

7 A. We -- in the United States we have a total of four
8 full-time employees. Excuse me. And in Pakistan we have a
9 total of four full-time employees.

10 Q. And what type of work research do you do there? You
11 generally alluded to terrorism, but tell us what you do.

12 A. Specifically, we're looking at a number of different
13 groups, everything from al-Qaeda, Hamas, Hezbollah, a
14 variety of different groups, really, around the world. Our
15 focus primarily is on groups that espouse a jihadi sentiment
16 or a jihadi ideology, and we trace these organizations,
17 their interactions with each other. These are mostly
18 transnational groups in the sense that they're not based in
19 one country. They're based in several different countries.

20 So we try to understand who the leadership is, how they
21 communicate, what their ideology is, what kind of targets
22 they're going after, what weaknesses they have, what their
23 recruitment strategy is. Who is doing their recruitment for
24 them, things like that.

25 Q. On a day-to-day basis, in doing this, what sort of

1 information or research are you and your associates doing?

2 A. We're looking at everything, again, from original
3 communications -- emails, message postings, transcripts,
4 sometimes of phone calls -- to other materials, books, video
5 recordings. Many of these organizations have their own
6 media wings, so they're continually releasing video
7 recordings that are Hollywood quality, really, which tell
8 the story about what they're trying to achieve and how
9 they're trying to achieve it, and who they're looking to
10 bring in to their midst. So it's a combination of all of
11 that, really.

12 Q. And what do you do with the collected, accumulated
13 material that you've described, the chat rooms, the videos,
14 what do you do with that information?

15 A. We take all of this information and then we store it
16 inside of an electronic database, a digital database, and
17 the purpose of doing that is so then we can go back and run
18 searches through vast, vast quantities of material, and we
19 can even do a search for a phone number, a bank account
20 number, part of somebody's name.

21 And we can search across, basically, every single
22 public message that's ever been posted on a jihadi chat
23 forum. We can search through every other court record,
24 every single court transcript. We can search through a
25 variety of different materials all at once in order to try

1996

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1 to nail down very, very specific points about these
2 organizations. The kind of information that, generally
3 speaking, you don't find outside of a Government agency or a
4 classified environment.

5 Q. You talked about voluminous amount of material. Is
6 much of it in Arabic?

7 A. A lot of it is, yes. The primary language that these
8 folks speak is Arabic, so a great deal of it is in Arabic,
9 yes.

10 Q. And do you, yourself, speak Arabic?

11 A. Not fluently, no.

12 Q. How do you reconcile that issue with your research in
13 your work?

14 A. Throughout the time that I have conducted this
15 research, I have worked with native language Arabic
16 speakers, as well as native language Urdu speakers, as well
17 as native language Pashto speakers. We work with native
18 language translators and analysts because they have the best
19 understanding of the language that's involved.

20 I currently work side by side with a native language
21 analyst, someone who graduated from grad school in the
22 United States, a native of Jordan, who obviously speaks
23 Arabic fluently and who serves as my research assistant.

24 Q. Now, the database you just described, can you give us a
25 general idea of its size and if you know of any comparable

1997

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1 databases?

2 A. Yes. The digital database that we have is
3 approximately six to seven terabytes in size. A terabyte is
4 a digital unit of size. It's equivalent to about a thousand
5 gigabytes. So it's about 7,000 gigabytes worth of
6 information.

7 To give you an idea, a DVD holds about four gigabytes,
8 so you're talking about literally thousands of DVDs' worth
9 of data. This material is everything from .txt documents,
10 which obviously don't take up as much space, and video
11 recordings, which take up more space.

12 We have, again, virtually every single video recording,
13 virtually every single audio recording, communique, magazine
14 released by any major jihadi organization in about the last
15 ten years.

16 We then, again, collect all this together and then
17 we're able to search through it.

18 Q. And could you describe for us in more detail who the
19 clients -- your clients of Flashpoint typically are?

20 A. Our clients are -- our clients range -- obviously, we
21 certainly work with the United States Government. The U.S.
22 Government agencies. We work the Federal Bureau of
23 Investigation. We work with the Department of Justice. We
24 work with the Department of Treasury. We work with the
25 State Department. We have also done work with intelligence

1998

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1 agencies more recently.

2 Outside the United States, we have done work with
3 Scotland Yards Counterterrorism Branch. We have done work
4 with Central Scotland police. We have done work with the
5 Danish PET Police Intelligence Service, we have done work on
6 behalf of the Australian Federal Police, the AFP. Most
7 recently, I did work for the third or fourth time on behalf
8 of the Supreme Court of Bosnia-Herzegovina.

9 THE COURT REPORTER: I'm sorry?

10 THE WITNESS: B-O-S-N-I-A, H-E-R-Z-E-G-O-V-I-N-A.

11 But beyond governments, we also do work with a variety
12 of other clients. We do work with everything from media.
13 I'm employed as an official on-air analyst on behalf of NBC
14 news, MSNBC here in the United States. We also work from
15 everything from Al Jazeera to BBC, in terms of media. We
16 also work with humanitarian groups. We work with human
17 rights groups. Recently I met with folks from Human Rights
18 Watch. We provide information to basically anyone who's
19 interested in what we're doing.

20 And, again, it can range. And because of the fact that
21 we're an open source, we're willing to work with a variety
22 of different parties.

23 Q. You say you provide information. Before we get into
24 some specific analysis, what type of product would
25 Flashpoint provide to any of these clients you've just

1999

Kohlmann - D

1 described?

2 A. It could be a variety of different products. It could
3 be anything from us taking material out of our database; a
4 particular magazine, a particular video recording, a
5 particular audio recording, and then providing that directly
6 to someone who's interested in a particular aspect of that
7 piece of evidence.

8 It could be a matter of distilling something into a
9 memorandum. Somebody is interested to know how many times a
10 particular person has surfaced in video recordings released
11 by an organization, and they want to know what that person
12 has said each time they've been shown in a video.

13 So we'll lay out a memorandum saying: These are the
14 various different times this person has appeared. This is
15 what they said. Or this is how many recordings have been
16 released, et cetera, et cetera.

17 Sometimes we're asked to take a look at individuals and
18 decide is this person potentially a threat based on what the
19 factors are, you know, based on the evidence that's gathered
20 against somebody.

21 Sometimes we're asked to provide video recordings,
22 custom-made video recordings, in which we take terrorist
23 propaganda and we cut it down into something that can be
24 shown to a mainstream audience. And this frequently happens
25 in regards to media work.

1 Q. And you use the phrase "open source" when describing
2 what the firm does. Can you just tell the jury what that
3 means and how it relates to your research?

4 A. Open source refers to materials that are nonclassified,
5 materials that were not gathered by -- specifically by a
6 government agency or by an intelligence agency. We focus on
7 gathering our own research, so we look to our own sources.
8 So when we want to get information about a terrorist
9 organization, we will try to interview the leaders of that
10 organization. We will try to interview the members of that
11 organization. We will look at the communications of that
12 group, the public communications. We take what's out there
13 publicly and we put it all together in a comprehensive,
14 cohesive manner.

15 Q. And you mentioned a number of different U.S. Government
16 agencies that you've worked for. Is employment or work for
17 the U.S. Government a significant source of your income?

18 A. Yeah, it's a significant source.

19 Q. And, specifically, have you served and been recognized
20 as an expert witness in a number of cases?

21 A. I have, yes.

22 Q. Now, I want to talk a little bit more about your
23 background. Have you also published a considerable amount
24 of work in the area of international terrorism and Islamic
25 terrorism?

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1 A. That's correct, yes.

2 Q. Without going into obviously all the publications, can
3 you generally quantify for the jury how much you have been
4 published in this subject area?

5 A. Yes, I have published a book titled *al-Qaeda's Jihad in*
6 *Europe*, which was published in 2004, first in London, and
7 then later here in United States by Palgrave Macmillan. I
8 also regularly publish articles in a variety of different
9 publications. I have published, I'd say, several dozen
10 different products in everything from peer-reviewed
11 journals, to journals such as the official magazine of the
12 West Point Counterterrorism Center.

13 It just depends on what the interest level is and what
14 the audience level is, but I do regularly publish material
15 about this, yes.

16 Q. And you alluded to your television work. Do you also
17 do some other public speaking work in your professional
18 capacity besides that?

19 A. Yes. I regularly present the work that we do, and I
20 regularly present the work that we don't do at a variety of
21 international conferences. Everything from conferences put
22 on by the United Nations to individual governments. I have
23 presented -- I've been invited and I have presented in
24 conferences on behalf of the United Nations in Saudi Arabia,
25 Riyadh. I have presented on behalf of a variety of

1 different European security organizations and nonprofit
2 groups in places like Baku Azerbaijan.

3 THE COURT REPORTER: I'm sorry?

4 THE WITNESS: B-A-K-U, A-Z-E-R-B-A-I-J-A-N,
5 Croatia, Bosnia-Herzegovina, around the region and around
6 the world, really. Indonesia, the Philippines, et cetera.

7 BY MR. KNIGHT: (Continuing)

8 Q. Thank you.

9 I have one more plea for you to slow down just a little
10 bit for our afternoon court reporter here.

11 A. I'm sorry.

12 Q. And then I'll get into another area. But in this
13 public speaking, have you also testified before Congress?

14 A. I have, yes.

15 Q. And what areas has that covered?

16 A. I have testified several times in front of Congress
17 about a variety of issues, including both terrorism finance,
18 as well as the current status of the terrorist organization
19 known as al-Qaeda, as well as the phenomenon of homegrown
20 extremism or violent homegrown extremism.

21 Q. And terrorism, obviously, is a broad area. Within the
22 written work you've described, your professional work you
23 described, is there a particular area or trend that you
24 focus on?

25 A. Yeah. My particular expertise is on, number one, the

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1 use of the Internet by international terrorist
2 organizations, particularly al-Qaeda; and, number two, how
3 that fits in generally with the greater trend of violent
4 homegrown extremists. In other words, individuals who are
5 not necessarily directly recruited by al-Qaeda, but
6 individuals who have adopted an al-Qaeda ideology and seek
7 to carry out their own missions in line with what they
8 perceive al-Qaeda would like them to do or what another
9 organization would like them to do.

10 Q. In the 15 years you have been working on this, can you
11 describe for the jury if the role of the Internet has
12 evolved or changed in the context of looking at
13 international terrorism?

14 A. Yes. Prior to 9/11 -- it's probably not a secret, but
15 most terrorist organizations were not on the Internet. They
16 didn't really have an Internet presence. When they wanted
17 to communicate with each other, they communicated via
18 satellite phone or cell phone or couriers. However, after
19 9/11, because of the resulting security clampdown on behalf
20 of the United States Government, as well as other
21 governments, it no longer became feasible for these
22 organizations to communicate via satellite telephone or via
23 couriers or having fixed locations, because those kind of
24 fixed locations simply became obvious targets for the FBI or
25 the CIA or other U.S. Government agencies, the United States

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1 military.

2 As a result, these organizations, al-Qaeda and its
3 allies, were forced to innovate. They were forced to adopt
4 a new means of communication and recruitment; a way of both
5 communicating amongst leaders of the group, as well as
6 communicating to people who are supporters or would-be
7 recruits and bringing them in. It was no longer possible to
8 have a fixed guesthouse where you could say, "Come here and
9 come meet us," because that's a place where obviously it
10 could be struck by a drone or people could go and be
11 arrested there.

12 So the Internet became the new frontier, it became the
13 new guesthouse. It became the new location in which
14 recruiters and leaders of terrorist organizations could meet
15 people who were potential financiers or potential recruits
16 or potential supporters.

17 And it worked that way because of the fact that the
18 Internet is a bit of a frontier. It's a bit of a wild
19 frontier, and there are ways that you can conceal your
20 identity on the Internet. And because of the way the
21 Internet works, you can have two people who are separated by
22 thousands and thousands of miles of distance but, in
23 reality, it doesn't matter, because they're able to
24 communicate like they live next door to each other; be it
25 video, be it chat, et cetera, et cetera.

1 Q. And this trend, can you quantify it at all even in the
2 last five years?

3 A. I can say that basically if you're not on the Internet
4 now, if you're not on jihadi web forums, you will have no
5 clue whatsoever in what's going on within al-Qaeda's
6 hierarchy or in its financing or in any aspect of the group.
7 If you want to really understand how these organizations
8 operate now, the best source of information, by far, about
9 how -- open source, I should say, the best open source of
10 information about how these organizations operate, aside
11 from going and physically, you know, trying to join them,
12 would be to view the material and communications that are
13 available openly on the Internet if you know where to look
14 for them and you understand what the context is of them.

15 Q. And you talked about academic work and your academic
16 background and your professional work, but dovetailing off
17 what you just said, do you do field work and research
18 investigation of this primary source material?

19 A. Yes. First of all, I regularly engage with individuals
20 on the web. We try to see what people are saying and
21 observe this.

22 But, more importantly, I try to go out and contact some
23 of these folks in real life, and we try to identify who they
24 are in real life. We try to figure out what their
25 background is and what led them to join a group or what even

1 led them to a forum, because some of the people that we
2 identify are not actually yet at the stage where they have
3 joined a violent group. They are still in the midst -- the
4 middle of become radicalized and somehow their identity has
5 been disclosed.

6 So one of the things we're always looking at is the
7 process of radicalization, both to understand, obviously,
8 how to deradicalize somebody, but also to understand what
9 the recruitment strategy is of groups like al-Qaeda and try
10 to determine how you can figure out when someone has reached
11 the point at which they have become a genuine threat to the
12 community that they live in.

13 Q. And you talked about specifically going on to some of
14 these websites. Can you tell the jury what a forum or a
15 chat room is, first?

16 A. Yes. A forum or a chat room or a social networking
17 forum is essentially like a bulletin board. There are
18 various different rooms inside of these forums. One room is
19 usually dedicated to just jihadi media. In other words,
20 only authorized couriers from particular terrorist groups
21 can go in that particular room and post material; but
22 everyone else can go in and view it.

23 So, in other words, this is a way for terrorist groups
24 to be able to disseminate their propaganda in such a way
25 that there's no question whether something is legitimate or

2007

Kohlmann - D

1 not legitimate or is it made up or fraudulent? The only
2 people who can post in these rooms are people who have been
3 vetted as being the official couriers of various different
4 terrorist organizations.

5 Then within these forums there are also often other
6 rooms dedicated to a variety of things. You have a general
7 room, you have a computer, a technology room, you have a
8 religious or a religious questions room. And in the other
9 rooms pretty much any other registered user, anyone who has
10 a log-in and a password to be able to access this forum, can
11 then post messages and can chat with people and can post
12 questions or can post their own original material.

13 It's a way that individuals who support these groups,
14 as well as the people who run these groups, can get together
15 and kind of all get to know each other in a fairly secure
16 environment.

17 Q. And is this the type of material, these forums, chat
18 rooms, that is included in your database that you've
19 described to the jury already?

20 A. Yes. One of the things we have in our database, in our
21 in-house database, is that we actually have credentials for
22 all these different forums. Some forums don't require you
23 to log in. But many of the most important ones require that
24 you have a log-in and a password.

25 So what we do is we use our log-in credentials to go

2008

Kohlmann - D

1 out and we grab basically every single public message that's
2 posted on these forums, and we save it inside of our
3 database. Because you never know, you know, looking
4 prospectively what will become important five years from
5 now. So we want to get everything.

6 We also want -- for the purposes of comparative
7 analysis, we want to see it all. We don't just want to see
8 bits and pieces.

9 So we grab pretty much every single public message on
10 these forums using specific computer technology, which is
11 designed to do this. In other words, it's not us physically
12 going and trying to save every file.

13 However, we also have human analysts that go on these
14 forums and that will save individual entries that they think
15 are important and will save these categorically.

16 In other words, if al-Qaeda central, if they release a
17 new video recording, not only with our automated systems
18 grab a copy of that press release advertising that's in the
19 video, but one of our analysts will physically note that and
20 will save the video and go through the video.

21 And we have all of this inside of our database.

22 Q. Now, I want to direct your attention to work in this
23 case, this defendant's case. You testified already that you
24 have served as an expert witness in a number of cases.

25 A. That's correct, yes.

2009

Kohlmann - D

1 Q. And has that been for the Government?

2 A. That's correct, yes.

3 Q. Has that been in a number of countries?

4 A. Yes. It's been in at least five different countries.

5 Q. And are those cases typically relating to the area of
6 international terrorism?

7 A. Yes, that's correct.

8 Q. Now, I want to ask you specifically about what you did
9 in this case. First of all, did you review materials
10 provided to you in this case?

11 A. I did, yes.

12 Q. And based on those materials, did you write a detailed
13 report?

14 A. I did, yes.

15 Q. And was that report in the area of 70 pages, single
16 spaced?

17 A. Approximately.

18 Q. And you just talked a little bit about these chat
19 rooms. Were you able to locate some postings or materials
20 attributed to this defendant that the Government had not
21 previously found and provided to you?

22 A. That's correct. I was using the materials from our
23 database. I was able to locate messages that were
24 apparently posted or perhaps posted by the defendant on
25 these forums that we had recovered that I do not believe the

2010

Kohlmann - D

1 FBI had recovered.

2 Q. And was that material included with the discovery, or
3 material of the investigation, in the material that you
4 analyzed?

5 A. It -- it was. It was included in the material I
6 analyzed. They were cited in my report, and I did turn over
7 copies of every single message that we located, regardless
8 of the content -- if it looked -- if it looked like it had
9 been posted by the defendant, we provided copies to the
10 Government.

11 Q. And your analysis and bill in this case, what is your
12 hourly rate, roughly, in a case like this?

13 A. In a case like this, usually my hourly rate is about
14 \$400 an hour.

15 Q. Your final bill was somewhere in the neighborhood of
16 \$37,000?

17 A. That's correct, yes.

18 Q. So roughly a hundred hours, or so, of work in this
19 case?

20 A. I have to check the invoice, but I think that's about
21 right, yes.

22 Q. And that's for the analysis that led to what we're
23 going to talk about in your report?

24 A. That's correct, yes.

25 Q. So I want to talk specifically about your methodology

2011

Kohlmann - D

1 and analysis.

2 Mr. Kohlmann, have you, through your research and
3 academic work, identified six factors that you
4 have -- consider to be important in identifying
5 characteristics common with people engaged in violent
6 jihadist behavior?

7 A. I have, yes.

8 Q. Can you tell us what those factors are?

9 A. Yes. Sure. In order to determine whether or not or
10 try to -- try to see whether or not someone is potentially a
11 threat, we often look to six factors. These are not
12 exclusive factors, obviously; but they are factors we
13 believe shed light on whether or not someone can be
14 considered to be a genuine violent threat.

15 Those factors include the evidence of -- or, excuse
16 me -- evidence of self-selecting plots or schemes. In other
17 words, has someone gone out and done research and is someone
18 actively trying to come up with a terrorist plot to the
19 point that they have details and they have a plan and
20 they're showing some kind of commitment to -- to a
21 particular scheme?

22 Number two, we look to whether or not someone like this
23 has previous or preexisting ties to a known extremist or
24 known representative of a terrorist organization or a known
25 recruiter for a terrorist organization.

2012

Kohlmann - D

1 We look to see whether or not someone has been -- or, I
2 should say, someone has adopted a radical sectarian ideology
3 that has put them at odds, not only with the mainstream
4 community inside the United States, but even within the
5 Muslim community itself, this is considered to be a very
6 aberrant viewpoint or could be an aberrant viewpoint.

7 Number three, we look whether or not this person is
8 engaging in logistical subterfuge -- this is number four --
9 engaged in logistical subterfuge. Is this person trying to
10 conceal their activities from law enforcement? Are they
11 engaged in activity that doesn't make any sense other than
12 them trying to hide themselves from public view? Because
13 that -- obviously there are questions raised by why someone
14 is trying to conceal what they're doing.

15 We look to whether or not somebody is deliberately
16 collecting and/or redistributing large amounts of terrorist
17 propaganda; i.e., video recordings produced by al-Qaeda's
18 official media wing, magazines produced by official media
19 wing of al-Qaeda.

20 And, obviously, one part of that is if someone is
21 trying to redistribute that; i.e., trying to send that out
22 to other people in order to radicalize other people, as
23 well.

24 And we look to see whether or not someone is browsing
25 websites or social networking forums which are explicitly

2013

Kohlmann - D

1 run by or on behalf of terrorist groups or terrorist
2 organizations.

3 And by looking at these various different factors, when
4 we look at them we see somebody who's been engaged in
5 self-selecting plots or schemes; i.e., without anyone
6 telling them to do this, has been coming up with, you know,
7 plots of either trying to leave the country and join a
8 terrorist organization or carry out an act of violence.

9 We see someone who's adopted in extreme ideology; a
10 very, very extreme ideology. We see someone who's engaged
11 in logistical subterfuge; someone who's communicating with a
12 known extremist leader; someone that's immersed in terrorist
13 propaganda and websites; they're affiliated with terrorist
14 groups.

15 That's the kind of person that we look at as a
16 potential violent threat.

17 Q. Where do these six factors you describe to the jury
18 come from?

19 A. They come directly from our own research. We regularly
20 look, both, at cases such as this, as well as we look at
21 other individuals who are out there on the Internet, or just
22 in general, who are fitting these various different
23 characteristics, who appear to be, you know, falling into
24 these categories, and we -- the idea is to try to understand
25 what is the difference between someone who is just posting

2014

Kohlmann - D

1 nasty messages on the Internet and someone who may have a
2 very deviate political philosophy but is not actually a
3 threat, versus someone who looks like they're so convinced
4 of whatever their belief system is that they're actually
5 willing to take action on behalf of it.

6 Q. And do the factors or the ideas behind these appear in
7 the academic work you've already described for the jury?

8 A. Yeah. I've never laid them out prong by prong. I
9 never laid out all six prongs, but I generally write about
10 homegrown extremism and homegrown terrorism. And all these
11 various different factors I've written about in the work
12 that I've written about, because these are fairly obviously
13 factors, and --

14 THE COURT REPORTER: I'm sorry. Could you slow
15 down?

16 THE WITNESS: Excuse me. I'm sorry. If somebody
17 is actively plotting to carry out a terrorist attack,
18 naturally that would lead someone to be concerned that this
19 is a potential violent extremist.

20 So these are -- these are the kind of things that we
21 look to that are -- you know, that really help us separate
22 away people who are not really that threatening.

23 BY MR. KNIGHT: (Continuing)

24 Q. And in your research, do you look at people who are not
25 engaged in these factors or not engaged in what could be

2015

Kohlmann - D

1 classified as terrorist-related activity?

2 A. Yes. We -- we engage in comparative analysis. We are
3 doing comparative research. And so you have to have a basis
4 for comparison. So in addition to working with moderate
5 Muslim groups and speaking with representatives of the
6 mainstream Muslim community, we also look to web forums or
7 websites where there are people who are expressing views
8 that we don't necessarily agree with and maybe the majority
9 of Americans wouldn't agree with, but these are forums where
10 the people don't appear to be violent in any way.

11 And we're trying to understand what distinguishes
12 people who are in a forum like that or who have that kind of
13 a philosophy from the people who are really looking to carry
14 out violent acts in the name of their ideology.

15 Q. Thank you.

16 Mr. Kohlmann, before we get into these specific factors
17 as they relate to the evidence in this defendant's case, I
18 want to ask you about some terms.

19 Are you familiar, sir, with the term the global jihadi
20 movement?

21 A. Yes.

22 Q. Can you explain to the jury what that is and its
23 significance to this type of analysis?

24 A. The global jihadi movement was actually just a subject
25 of some testimony by the Secretary of State for Congress two

2016

Kohlmann - D

1 days ago. The global jihadi movement refers to the fact
2 that beyond al-Qaeda, which is probably the most -- most
3 well-known group within this movement, there are a variety
4 of other jihadi movements out there, Sunni jihadi movements,
5 that are based all around the world, that don't necessarily
6 have the al-Qaeda name, but they share the exact same
7 ideology, or very similar ideology, to al-Qaeda.

8 Their leaders have often received training at al-Qaeda
9 camps, oftentimes in Afghanistan, and they are working
10 together in the sense that they share resources, they share
11 personnel, they share financing, they share information,
12 they try to coordinate their activities.

13 So in addition to al-Qaeda Central, you have al-Qaeda
14 franchises. You have al-Qaeda's committee in Iraq. You
15 have al-Qaeda's network in Yemen. You have al-Qaeda's
16 network in North Africa. These are actually separate
17 organizations, even though they work under the umbrella of
18 al-Qaeda.

19 Then you have other groups, as well. You have groups
20 like Shabaab al-mujahideen S-H-A-B-A-A-B, A-L,
21 M-U-J-A-H-I-D-E-E-N. Shabaab al-mujahideen doesn't have the
22 name al-Qaeda in it, but Shabaab has officially sworn
23 allegiance to al-Qaeda. They swore an oath of allegiance to
24 al-Qaeda. And, generally speaking, they operate within
25 al-Qaeda's worldview.

2017

Kohlmann - D

1 They believe that there is a crusade out there and that
2 the United States is leading this crusade and the crusade is
3 aiming at irradicating Islam and that only by working
4 cooperatively -- that's the only way these groups see that
5 they can defeat this threat.

6 So while these groups certainly have differences and
7 they certainly speak different languages sometimes and they
8 have differences in particular pieces of ideological
9 approaches to particular issues, the things that they can
10 agree on are the central issues, the issues that they
11 believe in Sharia. They believe in Islamic law. They
12 believe in an end to Western influence in the Muslim world.
13 They believe an end to what they call the apostate regime of
14 the Middle East; i.e., secular or nonhard-core Sunni
15 regimes, and a variety of other different things.

16 But, again, they see eye to eye on these issues and
17 they obviously share an enmity towards the United States.

18 Q. Next I want to ask you about the word or the term
19 "jihad."

20 A. Yes.

21 Q. Could you tell the jury, in the context of all your
22 work in research, what that term is?

23 A. Yes. Jihad is an Arabic word which means holy
24 struggle. Jihad can be an internal or it can be an external
25 thing. A jihad could be if you -- you're an alcoholic and

2018

Kohlmann - D

1 you decided to fight your alcoholism. You could wage an
2 internal jihad against alcoholism.

3 But there's external jihad. And external jihad
4 oftentimes takes, you know, the context of something
5 violent. That's oftentimes why this term has been
6 mislabeled, really, to be Holy War, because in the
7 contemporary context, violent organizations have so often
8 used this word that it's become almost a pejorative term.
9 Some Muslims don't like using it anymore, because it has
10 that immediate connotation to a violence or to al-Qaeda.

11 But jihad itself -- jihad itself, all it means is holy
12 struggle. It's just, unfortunately, in the contemporary
13 context, extremists have hijacked this term and turned it
14 into their own term referring to violent acts in the name of
15 their religion.

16 Q. How can you tell what the term or phrase is intended to
17 mean, given the different meanings you just described to it?

18 A. Well, it's based entirely in the -- in context. If
19 someone is talking about an external jihad and they start
20 talking about mujahideen -- mujahideen means the holy
21 warriors.

22 Well, people cannot wage an internal jihad inside of
23 somebody else. That's physically impossible. So if you're
24 talking about plural people who are engaged in external
25 jihad, i.e., mujahideen, that almost invariably refers to

2019

Kohlmann - D

1 people who are engaged in violent external jihad.

2 Q. I want to ask you a few questions about individuals in
3 the context of your research. Are you familiar with the
4 person by the name of Anwar Al-Awlaki?

5 A. Yes.

6 Q. And who is that?

7 A. Shaykh Anwar Al-Awlaki, now deceased, is a former
8 Yemeni-American cleric who was born in New Mexico to Yemeni
9 parents. Anwar Al-Awlaki drew a following amongst mostly
10 younger Muslims from a particular sect within Islam known as
11 the Salafi sect, which is a -- puritanical, I think is a way
12 to put it, but a conservative sect in Islam.

13 Anwar Al-Awlaki began having contact with extremists as
14 early as 1999. According to the FBI, he had contact with at
15 least two 9/11 highjackers prior to 9/11.

16 Following 9/11, Anwar Al-Awlaki began increasingly
17 issuing English language sermons encouraging Muslims in the
18 West to join violent jihadi groups, to engage in acts of
19 violent jihad, and to adopt a philosophy of violent jihad.

20 This eventually culminated in Anwar Al-Awlaki leaving
21 the United States and traveling to Yemen, where he began
22 providing support and assistance to al-Qaeda's network in
23 Yemen.

24 He was imprisoned in Yemen for approximately a year,
25 was released, and then went right back to al-Qaeda, where he

1 began working officially as an advisor and lieutenant on
2 their behalf.

3 He began issuing official video recordings and audio
4 recordings on behalf of al-Qaeda, ordering Muslims living in
5 the West to carry out acts of violent jihad imminently, in
6 English.

7 In September of 2011 Anwar Al-Awlaki was killed in a
8 missile strike in an undisclosed area of central Yemen.

9 Q. Do you know a person by the name of Samir Khan?

10 A. Yes.

11 Q. Who is he?

12 A. Samir Khan was a U.S. national who was killed in the
13 exact same drone strike as Anwar Al-Awlaki in September of
14 2011. Samir Khan became famous in the United States prior
15 to ever leaving the U.S. borders because of the fact that he
16 became arguably the most well-known American jihadist on the
17 Internet.

18 Samir Khan began by starting a blog, which was known as
19 inshallah shaheed -- I-N-S-H-A-L-L-A-H, S-H-A-H-E-E-D --
20 which, in Arabic, means God-willing a martyr. The blog was
21 set up in order to help redistribute al-Qaeda propaganda, as
22 well as to encourage English-speaking Muslims to either
23 adopt al-Qaeda's philosophy or to try to join one of its
24 various different organizations or entities.

25 Eventually Mr. Khan joined others and formed another

2021

Kohlmann - D

1 website known as Revolution Muslim; again, dedicated to the
2 exact same cause.

3 He also eventually produced a magazine, an English
4 language magazine, entitled *Jihad Recollections*, which was
5 aimed as English-speaking al-Qaeda supporters in the West;
6 primarily in the United States.

7 In 2009, after being profiled on television, after
8 being shown in reports in FOX News channel and CBS, after
9 having reporters having camped outside of his house, because
10 he was such a well-known extremist leader -- on the Internet
11 anyway -- Khan, who was very young, you know -- he was in
12 the early twenties -- left the United States and traveled to
13 Yemen, where he purportedly was going to be engaged in
14 teaching English.

15 However, Mr. Khan immediately used the opportunity to
16 travel into central Yemen, where he joined al-Qaeda in the
17 Arabian Peninsula, al-Qaeda's local outfit in Yemen, and he
18 began producing something on their behalf known as *Inspire*
19 magazine.

20 *Inspire* magazine was simply a rebranded version of his
21 previous magazine *Jihad Recollections*. The main difference
22 being is that *Inspire* magazine had the added benefit of
23 having official al-Qaeda personnel contribute --
24 contribute -- contributing an occasional article to the
25 magazine.

1 So whereas before the articles were being written by,
2 generally speaking, homegrown extremists, now the articles,
3 in many cases, were being written by official al-Qaeda
4 personnel, official al-Qaeda bomb makers, official al-Qaeda
5 leaders, including Anwar Al-Awlaki.

6 And, of course, like I said, after issuing
7 several -- several -- several -- I should say after
8 releasing several issues of *Inspire* magazine in September of
9 2011, Mr. Khan was killed in the same drone strike as
10 Anwar Al-Awlaki.

11 Q. You've alluded already to the importance of the acronym
12 AQAP in Yemen. Can you briefly describe, factually, the
13 significance of the Afghan conflict in the global jihadi
14 movement?

15 A. Yes. In the late 1980s and early 1990s a group of
16 foreign fighters from around the Muslim world, in places
17 like Egypt, Algeria, and Saudi Arabia, and as far as away as
18 Indonesia, left their homes to travel to Afghanistan in an
19 idea they would wage jihad on half of the Afghan people
20 against the Soviet Army, against the -- the Afghan Communist
21 Army.

22 However, some of these people were diehard world
23 extremists who believed that this conflict was the beginning
24 of a much greater conflict, which would see them sweep
25 across the Muslim world, removing, again, what they

2023

Kohlmann - D

1 described as apostate or secular regimes, and removing
2 Western influence. This was going to be a crucible from
3 which a greater jihad would be borne.

4 MR. WAX: Excuse me, Your Honor, I have an
5 objection that we need to take up out of the presence of the
6 jury.

7 THE COURT: At this time?

8 MR. WAX: Yes. Given what the witness has been
9 saying, I believe we need to address it at this time,
10 Your Honor.

11 THE COURT: All right. I'm going to -- I'm going
12 to ask the jury to be taken out, then, just for a short
13 time.

14 (The jury panel leaves the courtroom.)

15 THE COURT: What's your objection, Mr. Wax?

16 MR. WAX: Well, Your Honor, the witness has on a
17 number of occasions used the phrase "homegrown terrorist,"
18 and "temporary violent extremists," et cetera. I did not
19 object earlier in his testimony when he was using those
20 terms in the abstract, but he has now said that the
21 contributors to the *Jihad Recollections* magazine were
22 homegrown extremists or homegrown terrorists.

23 And as I'm reading page 12 of your opinion, that is
24 precisely the type of testimony that you had ordered
25 precluded.

Kohlmann - D

1 THE COURT: I believe that I ruled that the
2 experts cannot give an opinion on ultimate mental state that
3 defendant was or was not a homegrown terrorist.

4 MR. WAX: And I believe that by saying that the
5 contributors to *Jihad Recollections* were such people, when
6 there's been testimony in this case that Mr. Mohamud made
7 some contributions, and I anticipate that Mr. Kohlmann will
8 make such comments, as well, that he has crossed the line.
9 We ask that his testimony be stricken, and we ask that he be
10 precluded from any further testimony.

11 THE COURT: The motion is denied. He made a
12 statement about people who contributed were homegrown
13 terrorists.

14 Be very careful about what you say. Don't say anything
15 that is an opinion, on your part, as to the defendant in
16 this case --

17 THE WITNESS: Yes, Your Honor.

18 THE COURT: -- and the ultimate issue.

19 All right. Bring the jury back.

20 MR. WAX: Thank you.

21 THE COURT: Mr. Wax, if you have another
22 objection, make your objection in a general way. I have my
23 notes here, and I can make a ruling if I hear anything that
24 violates the court order.

25 MR. WAX: Thank you. Will do.

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1 (The jury panel enters the courtroom.)

2 THE COURT: All right. We'll take that as your
3 afternoon stretch. All right. You may proceed.

4 MR. KNIGHT: Thank you.

5 BY MR. KNIGHT: (Continuing)

6 Q. Mr. Kohlmann, when we left off you were completing an
7 explanation to the jury about the U.S. role in Afghanistan,
8 as it relates to what you described as the global jihadi
9 movement. Can you finish with that?

10 A. Yes. And so I was explaining that these individuals,
11 these foreign fighters, came there with the idea that this
12 would be a crucible for a greater struggle. So Afghanistan
13 became home for approximately about 10 or 11 years to a
14 series of training camps.

15 These became the epic, the very famous, al-Qaeda
16 training camps; the ones that you see in video recordings
17 that are on TV showing al-Qaeda personnel training. And
18 obviously these were released in propaganda videos. So
19 there became -- legends, you know, became about within the
20 extremist community talking about --

21 THE COURT REPORTER: I'm sorry.

22 THE WITNESS: I'm sorry.

23 -- talking about how important the conflict in
24 Afghanistan was and how important the training camps were,
25 and, most importantly, how important the jihadi leaders, the

1 transnational jihadi leaders and commanders who were based
2 there, how important those individuals were, people like
3 Osama bin Laden or his top deputy, now the leader of
4 al-Qaeda, Dr. Ayman al-Zawahiri.

5 BY MR. KNIGHT: (Continuing)

6 Q. Thank you.

7 Now, given that context and background, I want to
8 direct your attention to the facts and evidence you've
9 reviewed in this defendant's case.

10 Now, you described for the jury six factors common in
11 your research and analysis in these cases. So, first, I
12 want to turn your attention to the first of those factors.

13 Could you, again, briefly tell the jury what the factor
14 is, and then explain initially how you looked at the
15 defendant's case and the facts in his case under that
16 factor?

17 A. The first factor that I -- enumerated in my report is
18 the idea of self-selecting plots or schemes. Was somebody
19 engaged in a meaningful effort or efforts to try to either
20 travel abroad to join a terrorist organization or to carry
21 out an act of violence or some other meaningful act here at
22 home on behalf of an organization?

23 In reviewing the materials in the present case, I found
24 evidence of at least one, if not two, serious efforts to
25 travel to Yemen in order to join -- presumably in order to

1 join a violent jihadi group there, which at the time this
2 trip was supposed to take place, would have been al-Qaeda in
3 the Arabian Peninsula.

4 I also found discussion of a potential terrorist plot
5 that wasn't that detailed, but, nonetheless, there was
6 discussion of it, styled around what happened in November of
7 2008 in Mumbai, India, when a group of individuals carried
8 out a series of attacks on hotels in downtown Mumbai using
9 small arms, using AK47s and grenades; using basic weapons.

10 There was also discussion about attempting to travel to
11 Denmark in order to murder individuals in Denmark who were
12 accused of blaspheming against Islam for publishing
13 controversial cartoons depicting the Prophet Muhammad.

14 There was discussion in there of a variety of different
15 schemes, aside from obviously the scheme that is in question
16 in -- in this case primarily, which is a scheme to
17 potentially target somewhere locally here in Portland,
18 Oregon.

19 Q. Thank you.

20 I want to direct your specific attention to travel.

21 Are you aware, Mr. Kohlmann, of an email that was sent
22 between the defendant and an individual named Amro Al-Ali
23 about the university in Yemen?

24 A. Yes.

25 Q. Are you familiar with that university?

1 A. I am, yes.

2 Q. And what is the name of it, and how are you familiar
3 with it?

4 A. The name of the institution is Dar ul-Hadith.

5 D-A-R, U-L, H-A-D-I-T-H. Dar ul-Hadith is a seminary
6 in Yemen, in a place call Dammaj, D-A-M-M-A-J. It was
7 founded by a cleric known as Shaykh Muqbil M-U-Q-B-I-L, bin
8 Hadi. B-I-N, H-A-D-I, al-Wadiee, A-L, W-A-D-I-E-E.

9 Shaykh Muqbil was an avid supporter of jihad. And his
10 seminary, even though he eventually had an argument with
11 Osama bin Laden, his seminary in Yemen gained a reputation
12 among -- principally amongst English-speaking jihadists from
13 the West to be a good place to go to be a steppingstone to
14 find either a violent jihadi group or a very, very jihadist
15 cleric or some -- somewhere in the jihadi community.

16 This was viewed openly and was discussed openly on the
17 Internet as an excellent steppingstone for people in the
18 West who had no other way to get inside of a jihadi
19 organization.

20 Q. Now, speaking more generally about travel -- and you
21 just alluded to it -- what specific evidence did you see, in
22 what you reviewed, that indicated that you characterized as
23 a self-selecting scheme aimed at traveling abroad to join
24 organizations?

25 A. I viewed repeated discussions, both between the

1 defendant and individuals in Yemen, as well as the defendant
2 with the undercover agents in this case, in which the
3 defendant described his interest in traveling to Yemen and
4 the fact that in September of 2009 he actually made it as
5 far as the airport before being turned around at the airport
6 by FBI agents who met him there.

7 At the time, my understanding is the defendant -- based
8 on the communications that I reviewed, the defendant accused
9 or blamed his parents for turning him into the FBI because
10 of the fact they feared that he was traveling to either
11 Somalia or Yemen in order to join a violent jihadi
12 organization.

13 Q. Now I want to direct your attention to the second prong
14 of this analysis, not the second methodology -- sorry,
15 factor, but achieving imminent acts of physical violence.
16 What specific evidence were you looking at in this pool of
17 evidence that drew your attention to that issue?

18 A. Well, first of all, there was the discussion of things
19 like Mumbai, specific -- repeated discussions both with the
20 UCES, as well as, I believe, separate from the UCES, of
21 discussion about the importance of Mumbai and the
22 defendant's interest in Mumbai or carrying out potentially
23 an attack similar to Mumbai.

24 Obviously, there was discussion again of Denmark about
25 the idea of murdering people of Denmark abroad. And, of

1 course, there's the -- there's the plot that is the basis
2 for this case, which is potentially a terrorist plot or a
3 plot to carry out a terrorist act locally here in Portland.

4 Q. And a little later on we'll talk specifically about
5 evidence you reviewed related to Denmark. Can you tell the
6 jury briefly what significance Denmark has in the larger
7 context of Islamic terrorism in the global jihadi movement?
8 Why does it come up frequently?

9 A. Denmark is a very small country in Europe and most
10 Danes don't understand why they have become targeted by
11 jihadists, but there is a very good reason why. In 2006 a
12 Danish cartoonist named Kurt Westergaard --

13 THE COURT REPORTER: I'm sorry; the name?

14 THE WITNESS: Sorry. It's Kurt Westergaard.
15 There's actually a couple of them. It's probably fair to
16 say that there was a Danish cartoonist and several
17 individuals in Denmark who helped publish cartoons, which
18 lampooned the Prophet Muhammad. They drew him with a bomb
19 in his turban, et cetera, et cetera.

20 These cartoons were perceived as deeply offensive to
21 faithful Muslims; so offensive that when the cartoons were
22 published and received widespread coverage in the media,
23 that there were riots that took place in a number of
24 different capitals across the Muslim world. There were
25 angry demonstrations and various different terrorist

1 organizations, principally official venues or official
2 affiliates of al-Qaeda, began issuing offers of rewards for
3 anyone who would go out and murder the cartoonist and anyone
4 involved in the publication or republication of these
5 cartoons.

6 As a result, several different individuals have made
7 aggressive efforts at trying to kill that cartoonist,
8 including one individual of Somali origin who attempted to
9 take an ax and break down this man's door.

10 Another group of individuals based in Pennsylvania,
11 Maryland, and, really, across the East Coast, also attempted
12 to travel to Denmark in order to kill the cartoonist. In
13 fact, got so far as to send somebody over to follow the
14 cartoonist and try and figure out where he would be
15 vulnerable to being killed.

16 The issue continues to reverberate across the Muslim
17 world. And, as a result, Denmark remains a major interest
18 area and a target for jihadi organization.

19 BY MR. KNIGHT: (Continuing)

20 Q. Again, we'll turn to factual specifics later, but I
21 want to direct your attention to your second factor in your
22 analysis in reviewing the material in this case and others.

23 Could you please tell the jury, again, what that is
24 before we get into the facts?

25 A. Yes. The second prong that I looked at in my report

1 would be the presence of connections to known violent
2 extremist leaders or known recruiters or known generators of
3 violent jihadi content. In other words, has someone tried
4 reaching out to find someone who knows more than them in
5 order to get a helping hand; kind of a hand up into the
6 mainstream jihadi community.

7 Q. And did you see evidence in this case, connections
8 between this defendant and individuals you would
9 characterize as known extremist individuals or terrorists?

10 A. I did, yes.

11 Q. And I want to direct your attention to a few of them.
12 First, are you familiar with a person by the name of
13 Amro Al-Ali?

14 A. Amro Suleiman Al-Ali, yes.

15 Q. And outside of strictly the facts in this case, what
16 has your research shown about him?

17 A. In January 2011, the Kingdom of Saudi Arabia issued a
18 list of --

19 MR. WAX: Objection.

20 THE COURT: What's the basis of the objection?
21 Just state the legal basis.

22 MR. WAX: Relevance based on time.

23 MR. KNIGHT: That's a different issue from what
24 the agent's testified about. This expert witness is saying
25 what the pool of his knowledge about this person is.

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1 THE COURT: I'll allow that testimony.

2 Overruled.

3 THE WITNESS: In January 2011 the -- the Interior
4 Ministry of the Kingdom of Saudi Arabia issued a list of 47
5 individuals who were considered to be most wanted al-Qaeda
6 terrorist suspects on the loose considered to be imminent
7 threats and sought by the Interior Ministry for questioning
8 and potentially for adjudication in a court.

9 One of the individuals on that list was Amro Suleiman
10 Al-Ali. According to information that was provided to
11 Interpol by the Kingdom of Saudi Arabia, Mr. Al-Ali was
12 alleged to have traveled to Pakistan to receive training in
13 explosives.

14 MR. WAX: Objection. Hearsay.

15 THE COURT: Overruled.

16 Mr. Kohlmann, go ahead.

17 THE WITNESS: Thank you, Your Honor.

18 Mr. Al-Ali reportedly traveled to Yemen -- or, excuse
19 me, to Afghanistan -- excuse me, Pakistan to receive
20 training in explosives, as well as to provide financing to
21 al-Qaeda, and, according to the Interior Ministry, was also
22 involved in recruiting Americans and other Westerners to
23 join al-Qaeda.

24 BY MR. KNIGHT: (Continuing)

25 Q. Now, are you familiar in this case, Mr. Kohlmann, with

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1 a number of communications between the defendant and
2 Mr. Al-Ali?

3 A. I am, yes.

4 Q. And we're not going to go into detail of all those at
5 this time, but are you also familiar with an email
6 purportedly seized from defendant's person on the day of his
7 arrest with some information from Mr. Al-Ali?

8 A. Yes. It was a printed-out email on his person, that's
9 correct.

10 Q. And so we're going to take a look at that. It's
11 already been admitted. It's Exhibit 36. If we could
12 enlarge the portion at the top.

13 Is this what you looked at, Mr. Kohlmann?

14 A. Yes.

15 Q. First of all, is there a date on this? Do you have any
16 idea when it was sent?

17 A. I can't see one on here, no. It just says 3:44 a.m.,
18 four hours ago.

19 Q. And were you able to determine where the address and
20 phone number that appear on this originate from?

21 A. Yes. This actual address refers to a particular
22 neighborhood in Sana'a which is a city in Yemen, a major
23 city in Yemen.

24 Q. Is there any other information on here that you were
25 able to track or trace to a geographic location?

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1 A. I believe I was given an IP address, as well as the
2 email; but, again, the address -- the address and the phone
3 number here clearly list a location inside of Yemen.

4 Q. Thank you. And below there's some language in Arabic.
5 Do you see that?

6 A. I do, yes.

7 Q. And do you have -- with the assistance of an Arabic
8 translator, that portion of this email translated?

9 A. Yes. I requested that my research assistant translate
10 that Arabic portion into English.

11 Q. And was that translation contained in your report?

12 A. It was, yes.

13 MR. KNIGHT: And at this time, Your Honor, I would
14 like the witness to read -- not to publish to the jury only,
15 but have him read the translation of the poem to the jury.

16 I don't know if Mr. Wax has an objection. It's been
17 provided.

18 THE COURT: Go ahead.

19 THE WITNESS: Thank you, Your Honor. Quote: Let
20 the supporters of the Jews know no traitor among us will
21 escape his fate. We swear never to accept any negotiations
22 that dishonored our alasa (ph). We shall never forget
23 Jerusalem regardless of how high are the walls. We shall
24 not forget -- we shall not -- excuse me -- we shall not
25 forget the great Andalusia and will march to save our

1 Chechnya. Then our nightingale will sing, your time has
2 come. It has just come.

3 BY MR. KNIGHT: (Continuing)

4 Q. Thank you.

5 To clarify, that was the translation of the poem on the
6 document Exhibit 36?

7 A. That's correct, yes.

8 Q. Thank you.

9 And do you see in your review of the discovery and
10 materials in this case, given that background, do you see
11 significant mentions or discussions of Mr. Al-Ali in the
12 context of this case?

13 A. Yes.

14 Q. Could you please identify some of those to the jury
15 that you know as significant in the context of this factor?

16 A. There were several discussions that I reviewed in which
17 the defendant appeared to discuss Mr. Al-Ali with the
18 undercover operatives or undercover agents involved in this
19 case. He appeared to identify Mr. Al-Ali as an extremist
20 leader, as someone he apparently associated with a violent
21 jihadi organization as someone who he perceived that could
22 bring him into the fold; could bring him into a group like
23 al-Qaeda.

24 Q. Thank you.

25 And moving on, you've already testified briefly about a

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1 person by the name of Samir Khan. Did you review a number
2 of emails between the defendant, in this case, and Mr. Khan?

3 A. Yes, my understanding is that there is a total of 150
4 emails provided to me documenting communications between
5 Mr. Khan and the defendant.

6 Q. Thank you.

7 And before we get into some specific questions, did you
8 generally note contextually any significance to those
9 contacts, either their duration or content?

10 A. Well, there was 150 of them, which is kind of unusual,
11 because Samir Khan was a very well-known extremist. He was,
12 arguably, the most well-known homegrown extremist still
13 living in the United States. I have never seen anyone else
14 who has exchanged -- or I never heard of anyone else who has
15 exchanged 150 emails with Samir Khan over that period of
16 time. It seemed like quite a bit to me.

17 Q. You talked a little bit about Mr. Khan and his time in
18 the United States.

19 Now, you've testified already that Mr. Khan was living
20 openly when he was in the United States. Was he still
21 espousing what you considered, in your opinion, to be
22 radical or views relative to violent jihad during that time?

23 A. Yes. He was routinely espousing support for violent
24 jihad and encouraging others to adopt that point of view.

25 Q. I want to go to specifically Exhibit 239, number nine,

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1 that has already been admitted. This is an article from
2 *Inspire* magazine, authored by Mr. Khan.

3 Now, are you familiar with this article?

4 A. Yes, I am.

5 Q. And what's the name of the article?

6 A. The name of this article is: *I'm a Traitor to America*
7 or *I'm Proud to Be a Traitor to America*.

8 There you go: *I'm Proud to Be a Traitor to America*.

9 Q. Thank you.

10 In this what does Mr. Khan discuss?

11 A. Mr. Khan discusses how it is he ended up leaving his
12 home or leaving his conventional lifestyle in Charlotte,
13 North Carolina, to join al-Qaeda. Why it happened; how it
14 happened; and how others can learn from his experience.

15 He described everything from his actual traveling
16 process from the United States to Yemen, to his actual
17 joining of al-Qaeda.

18 Q. Thank you.

19 I want you specifically to look at a highlighted
20 portion of this, if you could, and read it to the jury by
21 Mr. Khan here. If you could please read that exerted
22 section to the jury.

23 A. Sure.

24 Throughout my experience of traveling from America to
25 Yemen, I was expecting to be stopped and detained, but the

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1 most trouble I went through -- if it's even considered
2 trouble -- was that it took 30 minutes extra to get my
3 boarding pass in North Carolina, since, as the receptionist
4 told me, I was being watched. It still surprises me when I
5 reflect on it -- I mean, I was quite open about my beliefs
6 online, and it didn't take a rocket scientist to figure out
7 that I was al-Qaeda to the core.

8 Q. Thank you.

9 And is Mr. Khan's observation about himself consistent
10 with what you observed during his time in the United States?

11 A. Yeah. We were just surprised that he was so open about
12 it; but, yeah, that was exactly our view, as well.

13 Q. And can you speak to Mr. Khan's significance to the
14 global jihadi movement that you described more broadly?

15 A. Samir Khan has become an icon of the global jihadi
16 movement, particularly because of the fact that as an
17 English-speaking American, who received a normal education,
18 was well-spoken and well-read, highly intelligent,
19 nonetheless, decided to shed his, what he referred to as,
20 his material life, and traveled to join al-Qaeda in Yemen
21 where he became the author or the inspiration behind an
22 official English-language magazine.

23 No al-Qaeda faction had ever issued its own
24 English-language magazine aimed at recruiting individuals
25 directly from the West.

1 So by publishing this magazine on behalf of AQAP,
2 Samir Khan became a rock star within this community -- not
3 that he wasn't already a rock star in the extremist
4 community before he left the United States.

5 THE COURT REPORTER: I'm sorry.

6 THE WITNESS: I'm sorry. But by producing *Inspire*
7 magazine or AQAP, it catapulted him to become, really, a
8 living legend among -- especially among homegrown
9 extremists.

10 BY MR. KNIGHT: (Continuing)

11 Q. And you've talked a little bit before about *Inspire*
12 magazine. Now, are you familiar with the contents and
13 authors of both of these publications?

14 A. I'm familiar with the content, and I'm familiar with
15 the authors; however, the authors, almost exclusively, used
16 pseudonyms, they used kunions (ph), which are like Muslim
17 names which are pseudonyms, aliases. They're not their real
18 name.

19 Q. And based upon your knowledge of the pseudonyms,
20 roughly how many contributors, based upon your review, are
21 there to *Jihad Recollections* during the time period it was
22 published?

23 A. I believe approximately five contributors in total.

24 Q. And then are there articles in *Jihad Recollections* and
25 *Inspire* from more notable individuals like Osama bin Laden

1 or Ayman al-Zawahiri?

2 A. Yes. Both *Jihad Recollections* and *Inspire* magazine
3 tended to recycle material from other al-Qaeda propaganda.
4 So they would take a speech by bin Laden and translate it
5 into English and translate parts of the speech in
6 *Jihad Recollections*, or, conversely, from *Inspire* magazine.

7 Likewise, they would do the same thing with other
8 al-Qaeda leaders, other al-Qaeda propaganda. They would
9 advertise particular videos that were released by other
10 al-Qaeda factions. It was an amalgam of information, both
11 *Inspire* and *Jihad Recollections*, of original content along
12 with recycled jihadi propaganda.

13 Q. Now, are you aware that the defendant did, in fact,
14 write material for *Jihad Recollections*?

15 A. I'm aware he did contribute articles to *Jihad*
16 *Recollections*, yes.

17 Q. We'll talk about that a little bit later in the section
18 of your analysis that deals with material generated by the
19 defendant. But at this time I want to turn your attention
20 to the third prong of your analysis. Can you tell the jury
21 what that is?

22 A. The third prong of my analysis is the adoption of a
23 hardline sectarian ideology that would put someone at odds,
24 not just, again, with American -- American society at large,
25 but, more specifically, even within the Muslim community;

1 would put them at odds with the mainstream Muslim community.

2 Q. Could you give us some context? What is Salafiism?

3 A. Sure.

4 Q. And what constitutes, in your view, in your opinion, a
5 hardline sectarian perspective?

6 A. Salafi simply means the -- sorry, refers to the elders
7 of Islam. Salafi. Salafis are, generally speaking, a
8 conservative brand of Islam. They believe in returning to
9 the conditions of Islam exactly as they were laid down by
10 the Prophet Muhammad back in the seventh century. And, by
11 doing so, they encourage the adoption of even clothing and
12 hairstyles and everything that they believe matches what the
13 Prophet would do.

14 Now, certainly, not all Salafis are violent. In fact,
15 the majority of Salafis are nonviolent. However, within the
16 Salafi branch of Islam or the Salafi sect of Islam, there is
17 a small group of people that believe that violence, a jihad,
18 a Holy War is an essential component of what the
19 Prophet Muhammad was doing back in the seventh century.

20 So, thus, anyone who believes in this ideology, if
21 they're really true to this, they should also be waging
22 violent jihad right now against the enemies of Islam.

23 The way in which you would know somebody would be
24 adopting a philosophy of a Salafi-jihadi philosophy -- you
25 know, there's a number of different ways. One of the

1 easiest ways is to look at the clerics, that -- the
2 particular clerics that this person is turning to for
3 religious guidance. Because Islam is different from
4 Christianity in the sense that Christianity you have -- in
5 Catholicism you have a Pope, you have one person who
6 supposedly dictates what Christianity is supposed to be --
7 what Catholicism is supposed to be about.

8 In Islam there is no one central authority. You have
9 different clerics to believe in different interpretations of
10 the religion. And obviously there's a small group of people
11 out there who are radical clerics, who are extremist
12 clerics, and who are not just emphasizing a return to, you
13 know, particular political conditions or emphasizing Muslim
14 nationalism, but that are calling directly for violent
15 attacks against anyone that they perceive as being enemies
16 of Islam.

17 There's a short list of clerics. It's a pretty easy
18 list. Not a long list. But if you see those people pop up,
19 that's a big red flashing sign telling you that this is a
20 person with a very passionate interest in the Salafi-jihadi
21 mindset or philosophy that I've just been describing to you.

22 Q. Do you see evidence of those individual clerics in your
23 review of the materials in the defendant's case?

24 A. Yes, I did.

25 Q. Now, Amro Al-Awlaki is someone you mentioned before.

1 Is much of his material simply religious proselytizing with
2 no reference to violence?

3 A. Yes. A significant quantity of his sermon simply refer
4 to various different aspects of Islam. They certainly
5 promote a conservative view of Islam, but they don't openly
6 call for violent acts against particular named individuals.
7 They are -- they are more philosophical in purpose.

8 Q. And do others of them espouse a more violent or
9 hard-lined philosophy?

10 A. Yes. There's a number of publications and sermons that
11 Anwar Al-Awlaki has given which explicitly, and without
12 any -- without any regret, express specific support for
13 violent jihad, urge people to carry out violent jihad,
14 specifically aimed at Muslim, young Muslims living in the
15 West.

16 Q. Thank you. Now, I want to direct your attention to
17 what we'll put up on the screen shortly as Exhibit 223-23,
18 an email between the defendant and Samir Khan that has
19 already been admitted.

20 We'll probably go to page 2. I apologize on this. Do
21 you recall this email, Mr. Kohlmann?

22 A. Yes, I do.

23 Q. And this is a -- there's a segment in this email that
24 goes into the second page. Do you recall the context of the
25 material that has specifically been put up on the screen in

1 front of you?

2 A. Yes, this comes from an email, I believe, between the
3 defendant and Mr. Samir Khan. Mr. Samir Khan had requested
4 the defendant to explain to him what his ideology was or
5 what clerics he's following in order for Mr. Khan to
6 determine whether or not the defendant is of the right
7 belief system, whether he's on the right ideological system,
8 whether this is somebody Mr. Khan could potentially work
9 with; specifically in the area of the magazine *Jihad*
10 *Recollections*.

11 Q. Thank you.

12 And, specifically, we have this list here. Did you see
13 evidence or are you familiar with some of these individuals?

14 A. Yes, I am.

15 Q. And I'm going to ask you some specific questions about
16 some of them, now that they've been identified here by the
17 defendant.

18 Mr. Al-Awlaki, you said quite a bit about, but do you
19 see specific evidence or did you find specific evidence of
20 written or published material attributed to him in this
21 case?

22 A. Yes, I did.

23 Q. And what specifically do you recall seeing or finding,
24 Mr. Kohlmann?

25 A. Number one, I found a complete transcript of a

1 recording that was made by Mr. Al-Awlaki titled *The Battle*
2 *of Hearts and Minds*. I also came across a download page on
3 a jihadi web forum for what was described by Mr. Al-Awlaki
4 as a -- as a statement to American Muslims.

5 Q. Are you familiar with that particular work?

6 A. Yes, I am.

7 Q. And how would you characterize that in relation to some
8 of the work by Mr. Al-Awlaki?

9 A. Mr. Al-Awlaki's statement to the American Muslims was
10 among his most radical publications. It was one of the
11 final publications that Mr. Al-Awlaki released prior to his
12 death. It was a publication in which Mr. Al-Awlaki, in
13 English, directly called upon Muslims, young Muslims, living
14 in the West to abandon American society and either travel
15 abroad to join a jihadi organization or, alternatively, to
16 carry out acts of violence aimed at disbelievers or the
17 enemies of Islam wherever they could be found.

18 Q. Thank you.

19 And there are a number of other individuals named here,
20 as well. I'm going to be asking, since they have been named
21 by the defendant here, for briefly, based on your own expert
22 work and analysis, to describe for the jury who some of them
23 are.

24 First, if you could tell us who Abdullah Azzam is.

25 A. Shaykh Abdullah Azzam was one of the cofounders, one of

1 the original founders of al-Qaeda with Osama bin Laden. At
2 the time he was Osama bin Laden's spiritual mentor. He was
3 regarded as the Godfather of jihad in Afghanistan. He was
4 the original person who got everyone together in the late
5 1980s to go over to Afghanistan and fight there.

6 He later began quarreling with bin Laden about
7 financing and other issues. And, ultimately, Azzam was
8 assassinated by unknown parties in Peshawar, Pakistan, in
9 November of 1989.

10 Despite his death, he remains heavily venerated by
11 al-Qaeda. He's routinely celebrated and cited in al-Qaeda's
12 videos and he's, generally speaking, regarded in great
13 esteem by supporters and advocates for al-Qaeda's world
14 view.

15 Q. Thank you. The next individual I'll ask you about on
16 the list of the defendant's here is Shaykh Rahman. Can you
17 briefly tell the jury who that is?

18 A. Shaykh Omar Abdel Rahman, otherwise known as the blind
19 Shaykh, is a very, very influential Egyptian cleric who was
20 the former leader of an Egyptian terrorist organization
21 known as al-Gamaa al-Islamiyya. A-L, G-A-M-A-A, A-L,
22 I-S-L-A-M-I-Y-Y-A.

23 Shaykh Omar eventually was forced to leave Egypt after
24 being put on trial for being involved in the assassination
25 of the Egyptian president in 1981. He eventually traveled

1 to the United States. In 1995 the Shaykh was convicted in
2 the Southern District of New York of seditious conspiracy
3 for his role in an attempted series of terrorist plots,
4 landmarks in the greater New York area, including the United
5 Nations, including the Holland/Lincoln tunnels, including
6 various different U.S. Government leaders, and including
7 the -- the former president of Egypt Hosni Mubarak,
8 H-O-S-N-I, M-U-B-A-R-A-K.

9 Q. There are a number of individuals listed on this page,
10 as well. I want to direct your attention next at the
11 highlighted name there. If you could tell us who that is.

12 A. Shaykh Hammoud bin Uqla Ash-Shuaybi is now a deceased
13 cleric from Saudi Arabia. He was a very conservative
14 cleric. He has been directly cited by al-Qaeda from their
15 propaganda and has been credited with recruiting several of
16 the 9/11 highjackers and encouraging them and their
17 associates to travel to Afghanistan in order to receive
18 training and orders on behalf of al-Qaeda.

19 After the September 11th, 2001, terrorist attacks on
20 the United States, the same cleric, Hammoud bin Uqla
21 Ash-Shuaybi, issued a fatwa in which he endorsed the 9/11
22 terrorist attacks and which he defended the highjackers and
23 those who tasked them as martyrs and heros.

24 Q. Thank you.

25 The next name on the defendant's list here. Who is

1 this?

2 A. Shaykh Yusef al-Uyayri, otherwise known as al-Battar,
3 which in Arabic means the slicing sword. Shaykh Yusef
4 al-Uyayri is a senior al-Qaeda commander, now deceased;
5 al-Uyayri was present in Somalia and Mogadishu in 1993
6 during the Black Hawk Down incident and allegedly provided
7 weapons that were used in that incident to kill U.S.
8 military personnel.

9 Al-Uyayri received training in Afghanistan and later
10 went back to Saudi Arabia. Al-Uyayri was the founder of
11 al-Qaeda -- al-Qaeda's official branch in Saudi Arabia,
12 known as al-Qaeda in Saudi Arabia. Al-Uyayri was a very
13 highly, highly influential jihadist, and he's often credited
14 by al-Qaeda as being the first progenitor within al-Qaeda of
15 a strategy involving homegrown terrorists.

16 Al-Uyayri kept explaining to his al-Qaeda colleagues
17 that they needed to decentralize al-Qaeda and they needed to
18 recruit in a more broad way.

19 Al-Uyayri, after founding the official branch in Saudi
20 Arabia, was killed in a clash with Saudi security forces
21 when he tried throwing a grenade at them.

22 Q. Thank you.

23 And Dr. al-Zawahiri you already described to the jury
24 who that is, so I'll ask you next if you can describe the
25 next person on the defendant's list -- well, I'll let you

1 tell us who he is.

2 A. Shaykh Nasir bin Hamad al-Fahad is also a very, very
3 well-known extremist cleric in Saudi Arabia. After --
4 shortly after the 9/11 terrorist attack in the United
5 States, Shaykh Nasir issued a fatwa endorsing the use of
6 weapons the mass destruction, including chemical,
7 biological, and radiological weapons against the United
8 States.

9 Shaykh Nasir eventually was arrested by Saudi security
10 forces because of the fact that he was caught attempting to
11 directly push an American national to carry out acts of
12 violence against the United States, including the
13 assassination of former President George Bush.

14 Q. We're going to go back to the first page. I have one
15 more name to ask you about. We won't go through all of
16 these.

17 Generally in your experience, you talk about a lot
18 these folks. Are these household names?

19 A. For the most part -- I mean, some of those are
20 household names. Ibn Taymiyyah is a household name.
21 Shaykh bin Ba (ph) and bin Amin (ph) are household names,
22 but somebody like Yusef Uyayri is really not known outside
23 of the circle of people who either support or are the fan
24 base of al-Qaeda, because he's not actually a cleric. He is
25 an al-Qaeda commander. And his only books have been

1 published through al-Qaeda. And he's dead and he was killed
2 in a -- you know, in a shootout.

3 He's not really a cleric. Some of these people, maybe
4 you could define as clerics, but even so, they're not
5 mainstream.

6 I mean, one of the individuals on this, Shaykh Abdullah
7 al-Faisal --

8 Q. That's who I was going to ask you about next. Thank
9 you. Go ahead and briefly tell us who he is.

10 A. Shaykh Abdullah al-Faisal is originally from Jamaica.
11 He traveled to Saudi Arabia where he received training in
12 Islam and then eventually moved to the United Kingdom, where
13 he got into some very serious trouble with British law
14 enforcement and was eventually convicted in a British court
15 of ordering followers to kill Hindus and Jews.

16 Q. Sorry. I just wanted to ask you, along those lines, I
17 want to get onto another portion of this material, do you
18 recall seeing anything in defendant's computer attributed to
19 Mr. Faisal?

20 A. Yes.

21 Q. What was that?

22 A. That was an audio recording by Mr. Faisal titled: No
23 Peace with the Jews.

24 Q. Thank you.

25 Now, did you also see in the course of your review of

1 the material in this case other statements, either written
2 or spoken by the defendant, that were evidence of the
3 adoption of this hard-lined sectarian philosophy?

4 A. Yes, I did.

5 Q. And I want to specifically direct your attention to
6 Exhibit 10, page 2, a composition book or diary seized from
7 the defendant, and direct your attention if there was some
8 language in there, in particular, that caught your
9 attention.

10 A. Well, that certainly is one line that caught my
11 attention, yes.

12 Q. Can you please read that to the jury?

13 A. NonMuslims are the eternal enemy of Islam and they must
14 be subdued and humiliated, but always call them to Islam
15 first.

16 Q. Why did this statement by the defendant catch your
17 attention in the context of this factor about an adoption of
18 a sectarian philosophy?

19 A. Because this runs counter to the mainstream view of
20 Islam, nonMuslims, particularly those from what's known as
21 people from the book, i.e., Christians and Jews, are
22 actually supposed to be treated with great respect and are
23 supposed to be protected because of the fact that there is a
24 shared -- a shared religious tradition through the Abrahamic
25 tradition.

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1 So this does not reflect the mainstream or general view
2 of Islam, but it -- it reflects a fairly sectarian view of
3 Islam, and I would say a fairly extreme view or version of
4 Islam.

5 Q. Along those lines, Mr. Kohlmann, in your review of the
6 discovery and the material here, did you see evidence that
7 the defendant was engaged in personal behavior that would be
8 characterized as more Western or conventionally Western --
9 the use of drugs and alcohol, relationships with women that
10 are not consistent with the hard-lined sectarian?

11 A. There was certainly behavior on the defendant's part
12 that would not comport with the ideals of an ideal religious
13 extremist. That's correct, yes.

14 Q. And in other cases where you've examined this
15 particular phenomenon or methodology, have you seen other
16 people espousing a philosophically hardline sectarian
17 philosophy while at the same time exhibiting these sorts of
18 Western behaviors?

19 A. Yes. It's no secret that --

20 MR. WAX: Objection, Your Honor, to others.
21 Relevance.

22 THE COURT: Overruled.

23 THE WITNESS: It's no secret that human beings are
24 prey to weaknesses, all human beings -- and terrorists are
25 human beings like the rest of us -- so sometimes people have

1 problems with alcoholism and people have problems with drug
2 use. It happens. And it happens such that al-Qaeda and
3 groups like al-Qaeda oftentimes see these type of
4 individuals as weak, as people that they can bring into
5 their fold, as people they can convince because they have
6 problems in their life and they feel like they can offer
7 them a solution, which is the reason that your life is not
8 working is because you're not following our ideology. So
9 what you need to do is drop what you're doing and pick up
10 what we're doing.

11 So these are actually the kind of people that al-Qaeda
12 often looks to recruit, are former drug addicts or
13 alcoholics or people that have substance abuse problems and
14 tries to draw them in, and, quite obviously, the reality is
15 that some of these people -- these problems can persist on
16 for years, even though outwardly they're expressing an ideal
17 that doesn't necessarily match their behavior.

18 But I don't think that's restricted to terrorism. I
19 think that's general human trait.

20 BY MR. KNIGHT: (Continuing)

21 Q. Thank you. In the context of this hardline sectarian
22 perspective, are you familiar or do you see the term martyr
23 or martyrdom?

24 A. Yes.

25 Q. Now, you, specifically in your research and review of

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1 evidence in this context, what does that mean?

2 A. In this context, someone who's a martyr is someone
3 who's been killed while serving the cause of Islam. But
4 from the view of Salafi-jihadis or of the Salafi-jihadi
5 sect, one can only be martyred if you are killed while
6 serving the greater cause of Islam; i.e., violent jihad. If
7 you are killed while waging violent jihad, then you are part
8 of the Shuhadaa, S-H-U-H-A-D-A-A. You're mujahid, you're a
9 martyr.

10 Q. I want to take a look at something in this case
11 specifically related to that. We're going to look at
12 225-35, an email that's been admitted. Part of a long chain
13 of emails, but I want to focus your language -- pardon me,
14 your attention specifically on the last four words of that
15 email in the context of the discussion there.

16 A. Yes.

17 Q. Are you familiar with that phrase "in the highest
18 chambers of paradise," Mr. Kohlmann?

19 A. Yes, I am.

20 Q. Can you tell the jury your understanding of what that
21 means in the context of martyrdom in this hardline sectarian
22 philosophy?

23 A. Yes. In Arabic it's known as al firdaws.
24 F-I-R-D-A-W-S. The idea here is that if you are -- if you
25 believe in the Salafi-jihadi mindset, if you believe in that

1 particular view of Islam, the idea is that you can never
2 really achieve the highest level of paradise unless you are
3 killed while serving the cause of Islam; i.e., you are a
4 martyr. The highest levels of paradise in the view of
5 Salafi-jihadis are reserved only for those who are martyred,
6 as well as family members who are -- who you intercede -- in
7 other words, on judgment day, you, the martyr, can intercede
8 on behalf of members of your family, and the highest level
9 of paradise is reserved for you and your family.

10 Q. Thank you.

11 I want to direct your attention to a writing of the
12 defendant you refer to, as well, which would be Exhibit 73,
13 item number three. And are you familiar with this
14 particular poem that has been offered, admitted, and
15 attributed to the defendant?

16 A. Yes, I'm familiar with this.

17 Q. And does the writing of the defendant in this instance
18 have any significance in the context of discussing martyrdom
19 vis-à-vis the hardline sectarian philosophy you're talking
20 about?

21 A. Yes. In the sense that there are a variety of
22 different words and phrases used in here which make it
23 pretty clear that in terms of martyrdom and in terms of
24 jihad, the meaning here is referring to the violent
25 connotation of that.

1 The line in here referring to "he is my friend and he
2 loves my AK," AK obviously refers to an AK47, which is an
3 automatic rifle. It's highlighted there. Yes. There's
4 talking about gunfire, gunfire, what a deafening sound.
5 White snowcaps and bullets direct. Oh woe to the Christian.
6 My dagger hits his chest.

7 I don't really see how you could view this as anything
8 other than espousing Salafi-jihadi view of jihad; in other
9 words, violent jihad.

10 Q. In the course of your view of the material,
11 Mr. Kohlmann, did you see other writings of this defendant
12 or poems of this defendant that also supported the
13 conclusion you just stated about the presence of this
14 viewpoint in the evidence?

15 A. Yes. I did come across a variety of poetry or pros or
16 other documents which suggested a very similar conclusion.

17 Q. Thank you.

18 I want to direct your attention now to what has been
19 categorized as the fourth prong of your analysis. In
20 reviewing nearly cases like this, can you tell the jury what
21 that is?

22 A. Yes. So we've gone through so far self-selecting plots
23 and schemes, we've covered the idea about preexisting
24 connections, and we've covered the idea about -- about
25 adopting a radical viewpoint.

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1 The next point would be logistical subterfuge.

2 Q. What does what mean?

3 A. Logistical subterfuge simply means that you are taking
4 efforts to conceal your behavior, to conceal your
5 activities, to conceal your true viewpoints or how you
6 really feel or what your real intentions are.

7 This is particularly relevant when it's logistical
8 subterfuge in relation to law enforcement, in relation to
9 somebody's parents and their intention of traveling abroad.
10 Things like that. Those -- that kind of logistical
11 subterfuge certainly is a factor we look at, and it's
12 certainly relevant to our analysis.

13 Q. And by way of comparison and contextually, have you
14 seen evidence of that in other cases?

15 A. Yeah, it's very, very common when you have violent
16 extremists that they are engaged in logistical subterfuge
17 because of the fact they're afraid their activities will
18 come to the attention of law enforcement, their employers,
19 their parents, any authority figure.

20 Q. And I want to ask you, then, specific questions about
21 evidence of this factor you saw in this case.

22 First of all, do you recall reviewing the 100 or 50 or
23 so emails between the defendant and Mr. Samir Khan?

24 A. I did, yes.

25 Q. And did you see any evidence or statements of the

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1 defendants in those emails that would indicate to you the
2 presence of this effort to avoid detection, basically?

3 A. Yes, I did.

4 Q. And what was that?

5 A. The defendant specifically deferred or demurred, I
6 should say, upon the issue of telling Mr. Khan where exactly
7 he was located in the United States. He appeared to suggest
8 that it wasn't a good idea for him to explain where exactly
9 he was located in the United States.

10 Q. And did you see that same sort of effort in other
11 emails between the defendant and other persons in the case?

12 A. Yes, I did.

13 Q. And can you talk specifically about some of those?

14 A. Yes. The defendant specifically advised the undercover
15 agents in this case when they met with him to take their
16 cell phones out to remove the batteries and SIM cards from
17 their cell phones during meetings with him because the fact
18 that he believed that the phone could be used for
19 surveillance purposes by law enforcement. Even though the
20 phone would be off, as long as the battery would be in, he
21 assumed it could be used, and, thus, he insisted that the
22 undercovers remove the batteries and SIM cards from their
23 phone.

24 He also communicated with Mr. -- with Mr. Amro Suleiman
25 Al-Ali, the Saudi national who was on the Saudi most wanted

1 list, using something that is known as a draft email box
2 trick, which, basically the idea here is that emails that
3 are sent on the Internet, if you send from one person to
4 another, in order to get between those two people, they have
5 to go through various different servers, and, on their way,
6 they travel through various different countries. And the
7 concern is that if a law enforcement or national security
8 agency wanted to grab someone's emails, they could sit on
9 the server and watch the emails as they go through.

10 The draft email box trick works so that you have one
11 email account shared between two people. Someone writes up
12 an email and saves it as a draft. In other words, they
13 never send it, they just save it as a temporary email in the
14 draft box of the email account.

15 The second person then logs into the same email
16 account, reads the draft message, and gets all the
17 information. And, yet, the email itself was never actually
18 sent, so it never actually went through any of these other
19 servers on the Internet, so it just stayed in one place.

20 So, in other words, it's -- the idea, anyway, is to
21 prevent law enforcement or the NSA or other national
22 security agencies from being able to see the content of
23 those messages.

24 Q. That's something you believe is present based on your
25 review of the emails in the case?

1 A. That's correct.

2 Q. And I want to direct your attention now to some
3 specific statements or writings of the defendant and ask
4 your opinion about those in the context of this factor.

5 If we can look at Exhibit 10, writings of the defendant
6 that have been offered and admitted, and go to Bates 11355.
7 There's a statement in there, and I want to direct your
8 attention to the bottom of the page, please.

9 A. Yes.

10 Q. And in this little segment here, is there something, in
11 particular, that you have noticed in the context of this
12 larger issue?

13 A. Yes. The defendant right here states specifically that
14 he believed that he needed to treat everyone around him
15 with, quote, mistrust and hatred. Plus, despite his
16 feelings of mistrust and hatred, he felt he had to,
17 quote/unquote, hold onto normality, in other words, act
18 normally, to secure myself from the FBI, less they should
19 monitor me. In other words, don't show outward signs of
20 radicalization, don't show outward signs of extremism
21 because of the fact that that kind of behavior would attract
22 negative attention from law enforcement.

23 Q. Thank you. I want to go, after this exhibit, to
24 Exhibit 18. Additional writings of the defendant that have
25 been received and admitted. Page 4 -- or Bates page, sorry,

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1 436. Somewhat confusing -- it's there.

2 Did you review this particular page, Mr. Kohlmann?

3 A. Yes, I did.

4 Q. And were there statements on here that caught your
5 attention?

6 A. Yes. There was a number of statements that reflected
7 basically exactly what was in the previous document. In
8 this document the defendant writes: You are: Hipster
9 Muslim rap maybe. Has people over, but no signs of
10 extremism. Free time. Parents. Act 2 party. In other
11 words, he was talking about acting like someone who doesn't
12 fit the profile of an extremist. At least not outwardly, at
13 least not with his friends or with his associates, and
14 apparently he suggests that he's going to take the -- the
15 image of what he described as, quote/unquote, a hipster
16 Muslim.

17 Q. Thank you. So --

18 MR. WAX: Your Honor, I object to the -- the
19 profile.

20 THE COURT: You object to the profile?

21 MR. WAX: To the use of that phrase for reasons
22 previously articulated.

23 THE COURT: Tell me the phrase you're talking
24 about.

25 MR. WAX: The witness testified that this is

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1 designed to avoid looking like he doesn't fit a profile.

2 MR. KNIGHT: He's reading the defendant's writing
3 and using that word. I don't think the word profile has
4 been banned from use.

5 THE COURT: I'm going to overrule your objections.

6 MR. KNIGHT: Thank you.

7 BY MR. KNIGHT: (Continuing)

8 Q. Mr. Kohlmann, we looked at the defendant's writings.
9 You talked about some of his email contact with others.
10 Were there statements made from the defendant to the
11 undercover agents in this case that also supported your
12 analysis or fit into your analysis about this particular
13 prong?

14 A. Oh, yes. Yes, a wide variety of such statements.

15 Q. Can you specifically explain to the jury which
16 statements to the undercovers, from the defendant, raised
17 this issue of logistical subterfuge, as you call it, or
18 concealing activity?

19 A. Well, I believe that at one point the defendant used
20 the passcode in order to enter a storage facility which he
21 labeled umra, which was supposed to be a euphemism referring
22 to jihad.

23 Q. Sorry. Was it hajj?

24 A. Hajj. Excuse me. Hajj, not umra. Hajj is a journey,
25 a religious pilgrimage that all Muslims are required to do

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1 once in their life to Mecca, which is the Holy City. It's
2 the --

3 THE COURT REPORTER: I'm sorry, can you --

4 THE WITNESS: Oh, I'm sorry. Mecca is M-E-C-C-A.
5 It's the holiest city of Islam in the Arabian Peninsula in
6 Saudi Arabia.

7 BY MR. KNIGHT: (Continuing)

8 Q. So --

9 A. Sorry. Go ahead.

10 Q. So you identified that example. Was there some
11 evidence of this factor in the discussions you saw about the
12 defendant's potential travel to Alaska when he talked about
13 that with the undercover employees?

14 A. Yes, yes.

15 Q. What, in that area, did you identify?

16 A. The defendant suggested that he had an intention of
17 using his trip to Alaska to serve as a cover or a jumping
18 off point in order to travel to Yemen. He had -- nine
19 months previously he had been stopped at the airport by the
20 FBI and turned back. He expressed to the undercovers the
21 idea or the notion that by using the Alaska trip as,
22 quote/unquote, a legitimate enterprise, he could then leave
23 his job in Alaska afterwards with about \$15,000 in cash and
24 travel straight to Yemen.

25 Q. I want to lastly in this area -- you talked a little

1 bit about online activity and these articles that are
2 written. In your experience, reviewing web forums, these
3 magazines, do individuals typically use their true given
4 names when they write on these forums?

5 A. They would be foolish to. It's fairly rare.

6 Q. So is that -- are the use of pseudonyms common in this
7 context?

8 A. It's almost universal, yeah.

9 Q. What does the term avatar mean to you in your analysis
10 or discussion in the use of a pseudonym?

11 A. The idea of an avatar is to create an online identity.
12 Not everyone's online identities match their real life
13 identities. So we call these identities avatars. These
14 avatars are often -- you build up a personality profile on
15 yourselves.

16 You have a picture that you like to represent yourself.
17 Some people in these jihadi forums use pictures of Osama bin
18 Laden or whatnot. But you build a reputation on the forums
19 for having a particularly philosophy or being a particular
20 mindset and that's how you're taken as a credible actor in
21 the forums, by building an avatar, by build a posting
22 history, by building a history, showing what your -- what
23 your perspective is and how committed you are to a given
24 mission.

25 Q. Thank you.

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1 And do you frequently see the uses of both pseudonyms
2 in this practice in the world in which you're examining
3 jihadi chat rooms and web sites?

4 A. Yes, they're also -- jihadi chat rooms, they're almost
5 universal.

6 MR. KNIGHT: Your Honor, I think this is a good
7 place.

8 THE COURT: We'll go ahead and recess for the
9 weekend. We'll start again at 9:00 on Monday morning. I
10 will mention to the jury that I think we're making good
11 progress. I believe that the Government is going to
12 complete their case fairly soon, so I'll pass that onto you.

13 Now, as we get closer to getting this case submitted to
14 you, it's still very important to remember don't form any
15 opinions whatsoever and don't discuss the case with anyone.

16 And, also, have a good weekend. We'll see you again on
17 Monday morning.

18 I'll see the lawyers a moment.

19 (The jury panel leaves the courtroom.)

20 THE COURT: You may be seated. Okay. I want to
21 make sure that the lawyers have advised the expert witnesses
22 that they're going to call of the Court's determination as
23 to what they may testify to and not testify to. We'll have
24 to be very careful.

25 Mr. Kohlmann, I'll leave that with you, as well, not to

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1 come in the back door.

2 We're talking about here specifically that the experts
3 cannot give opinion on ultimate mental state and cannot give
4 an opinion that the defendant was or was not a homegrown
5 terrorist, a contemporary or violent extremist, turned to
6 violence or traversed the staircase to terrorism.

7 Are you getting ready to stand?

8 MR. KNIGHT: I wanted to let the Court know I
9 addressed this with the witness, and I also conferred with
10 Mr. Wax to make sure we had the same understanding of the
11 order.

12 THE COURT: Well, I wanted to make that clear so
13 we don't have any concern on this.

14 All right. The other thing I would like to have you
15 do, as we're getting down to the defendant's case, I'd like
16 to know if there are disputes over any exhibits that we're
17 going to have to resolve.

18 What I'd like to have you do over the weekend or if you
19 need until noon, say, or 1:00 on Monday, just give me a
20 short letter about any exhibit issues that are going to have
21 to be resolved at this point.

22 Do you have all your exhibits in at this point?

23 MR. KNIGHT: They're not all in, Your Honor. I
24 think we're pretty close. There are a few remaining
25 disputes that I think we've discussed and narrowed down that

1 we can get to the Court Monday without any problem.

2 THE COURT: All right, Mr. Wax? Okay?

3 MR. WAX: Will do.

4 THE COURT: All right. Thank you. We'll be in
5 recess then.

6 DEPUTY COURTROOM CLERK: Court is in recess.

7 (Proceedings were concluded on January 25, 2013, and
8 reconvened on January 28, 2013.)

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1 C E R T I F I C A T E

2 I certify, by signing below, that the foregoing is
3 a true and correct transcript of the record of proceedings
4 in the above-entitled cause. A transcript without an
5 original signature, conformed signature, or digitally signed
6 signature is not certified.

7

8 /s/Jill L. Erwin

9

 Jill L. Erwin, RMR, CRR Date: January 25, 2013
10 Official Court Reporter
Registered Merit Reporter
Certified Realtime Reporter

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